COURT REFORM IN SEVEN STATES

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COURT REFORM IN SEVEN STATES

Lee Powell, Editor

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INTRODUCTION

The National Center for State Courts is pleased to cooperate with the American Bar Association's Committee on Implementation of Standards of Judicial Administration (ISJA) in the publication of this book, *Court Reform in Seven States.*

The National Center is a private, nonprofit organization dedicated to the improvement of justice at the state and local levels, and to the modernization of court operations. It acts as a focal point for judicial reform. By providing staff to the ISJA Project Committee, the National Center serves as a catalyst for setting and implementing standards of fair and expeditious judicial administration. Such a joint effort to improve the effectiveness of America's judicial system is an excellent example of one way in which the National Center seeks to accomplish its mandate.

The National Center hopes that this volume's narrative of court reform strategies used in seven states will assist other states in achieving similar successes.

Edward B. McConnell, Director
National Center for State Courts

PREFACE

Beginning in 1975, the American Bar Association Committee on Implementation of Standards of Judicial Administration has conducted a comprehensive project to urge consideration of the ABA Standards of Judicial Administration, the first of which, Court Organization, was adopted in 1974, followed by Trial Courts in 1976 and Appellate Courts in 1977.

Many states are changing to unified trial courts, consolidated administrative structure, judicial merit selection, judicial discipline commissions, and unified state budgeting. The progress in reforming and improving the court systems in some states has led to increased attention to the problems in others. The public, the legislatures, and the executive branches of government are increasingly receptive to fundamental reorganization of the state judicial systems.

The first project commissioned by the Committee was the Model Judicial Article adopted in 1978. This was followed by the preparation of state profiles for all 50 states, comparing their present court systems with the Standards. During the third phase of the project, the Committee commissioned six descriptions of Standards implementation efforts in six states: Connecticut, Kentucky, New York, Utah, Washington, and Wisconsin. The Florida article, which describes recent court reform activity in that state, is a welcome addition to the series. Each article is written by a leading participant in a state reform effort. The papers highlight the reasons particular reforms were chosen, how the goals were modified over time, and the specific reform methods undertaken. The articles describe both successful and unsuccessful reform attempts.

Writings on the state of the art of court unification and the general theory of implementing change have existed for some time. These histories, written from an insider's view, will supplement court reform literature.

James J. Richards, Chairman
Implementation of Standards of
Judicial Administration Project
Committee

KENTUCKY

IMPLEMENTATION OF COURT REFORM IN KENTUCKY

William E. Davis

Laws and Institutions must change to keep pace with the progress of the human mind.

—Thomas Jefferson

Court reform has been the largest change in Kentucky's governmental history. The abolition of all lay judges and the introduction of state funding of all court operations have been accomplished in three years. Thus, much has been done in a short time, yet much remains to be done. This written report can summarize the efforts, but in no way can it truly reflect the dedication and hard work of many hundreds of people.

Omitted from this discussion is another significant reform in Kentucky—that of pretrial release. Since June 1976, commercial bail bondsmen have been outlawed and a state-operated pretrial-release system has been instituted. Purging the criminal justice system of the dross of bondsmen broke the ice for future court reform. This program, operated within the Administrative Office of the Courts (AOC), has been discussed in other literature.

This article discusses the historical background of court reform, the strategies of reform, and major aspects of reform (personnel, records, facilities, accounting). An additional section is added for evaluation of the implementation.

The author wishes to acknowledge gratefully the contributions to this article of Nancy Lancaster and Don Cetrulo. The author also wishes to dedicate this article to Leland S. King, a former employee of the Ad-

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William E. Davis served as the Director, Administrative Office of the Courts, Kentucky, from July 1976 to July 1979. Mr. Davis is working at present with the Bahai World Center in Haifa, Israel. He received an AB degree from Transylvania University, Lexington, Kentucky, and a JD degree from the University of Kentucky, Lexington.

ministrative Office of the Courts who died recently from leukemia. Mr. King was responsible for court facilities, equipment, and office space—and also for office morale. To all those who knew him, his vitality, his good humor, and his concern for others have been graphic examples of the attributes many seek to acquire. His example stirred us in the office to aspire to the best in every endeavor.

Historical Background

When Kentucky became a state in 1792, its constitution was patterned after that of Virginia. The judicial power was vested "in one supreme court, which shall be styled the Court of Appeals, and in such inferior courts as the legislature may, from time to time, ordain and establish." In addition, "a competent number of justices of the peace" were to be appointed in each county.

By the time Kentucky's fourth constitution was adopted in 1891, constitutional status had been given to a variety of courts. In addition to circuit courts (courts of general jurisdiction), recognition was given to police courts, county courts, quarterly courts, justice of the peace courts, and fiscal courts. Under the enabling legislation, the fiscal court was, and is, essentially the governing body for the county. The other courts were given overlapping inferior jurisdiction in both civil and criminal cases. There were no qualifications, other than residence, for the judges of these courts.

In a 1923 "Report on the Judiciary of Kentucky" by the Efficiency Commission studying state government, the foremost change advocated was the unification of the trial courts under the direction of the chief justice. The commission pointed out that the courts are created to administer a unified body of law and should therefore be unified in operational procedures.

Attempts to Revise the 1891 Judicial Article

Stopgap legislation was attempted through the years in an effort to cure the ills of the system, but it was finally agreed by those interested in court reform that constitutional revision was the only answer. Kentuckians had historically refused to alter their 1891 constitution; although a few minor amendments had passed, no substantial changes had been made. There was discussion of a Constitutional Convention in the early 1950's, but local officials, especially county judges, were threatened by the possibility of such a change and uniformly opposed any efforts to alter the courts.

The next notable attempt to revise the 1891 judicial article was embraced in a proposal by the 1966 Constitutional Revision Assembly. At

the regular session of the 1964 General Assembly, the Constitutional Revision Assembly had been created to draft a new constitution that would be placed on the ballot as an "amendment." This process was an alternative to calling a Constitutional Convention, since the Kentucky electorate historically had opposed the convention call procedure.

The judicial article drafted by the Constitutional Revision Assembly closely resembled the Model Article advocated by the American Judicature Society and the American Bar Association. It provided for a supreme court, a court of appeals, circuit courts, and district courts, and stated that the courts should constitute a unified judicial system for purposes of operation and administration. The article further provided for merit selection of judges, with some exceptions. All district judges were to be elected, as were circuit judges in districts with a population of less than 50,000, unless otherwise mandated by referendum in a district. All other judges were to be appointed by the governor on nomination by judicial nominating commissions. Also included in the proposed judicial article were provisions for state funding of the court system and for a retirement and removal commission. Under the article, the General Assembly was granted the authority to set jurisdiction and to approve supreme court rules governing practice and procedure.

The entire Constitutional Revision Assembly proposal became an issue in the political arena, but the judicial article was the most abused. For the first time in more than 20 years, there was a Republican primary battle for the gubernatorial nomination, while the Democratic administration was trying to maintain itself in office. The struggle to control the county power bases centered on the proposed judicial article because its approval would strip county judges, justices of the peace, and police judges of their judicial authority. Support of the article was tantamount to political suicide. The voters rejected the new constitution on election day by a four-to-one margin.

In 1968, following the defeat at the polls, the Kentucky Bar Association took the lead in yet another movement to revise the state's court system by sponsoring, in conjunction with the American Judicature Society, a statewide Citizens' Conference on Kentucky State Courts. Response to the conference was encouraging, and the resulting consensus statement was disseminated in a concerted effort to inform the public of the need to improve the courts.

When the general assembly convened in January 1972, the Kentucky Bar Association had a draft judicial article prepared for submission as a constitutional amendment. The proposal included a supreme court (court of last resort), a court of appeals (an intermediate appellate court), and circuit courts (courts of general trial jurisdiction). The proposal called for administrative unification of these courts under the chief justice. The draft contained no provisions for district courts or for

selection of judges. The drafters left these matters up to the discretion of the General Assembly. There was apparent division of opinion among the bench and bar as to the wisdom of including the lower courts in the revision. Many felt this would lessen the chances of passing an amendment that would ensure an intermediate appellate court. Lacking the accord that would have been necessary to ensure its adoption, the bill died in committee.

Need for Judicial Improvement

Immediately after the regular session of the 1972 General Assembly, the growing need for judicial improvement resulted in the formation of several committees charged with the task of drafting a new judicial article. Governor Wendell Ford established the Governor's Judicial Advisory Commission by executive order. Other active drafting committees were the Steering Committee of the Kentucky Court of Appeals, the Judicial Article Committee of the Kentucky Bar Association, the Courts Committee of the Kentucky Crime Commission, and the Interim Committee on Elections and Constitutional Amendments of the Kentucky General Assembly.

The first full draft of the judicial article relied upon previous experience. This draft, completed by the ad hoc committee in May 1973, provided for a four-tiered system unified for the purposes of administration under the chief justice. Judges at all levels were to be lawyers appointed under a merit selection process, and the question of retention in office was to be submitted for approval or rejection by the local electorate. The proposal also included sections relating to commonwealth's attorneys, providing that they should be full-time prosecutors paid by the Commonwealth and prohibited from engaging in the private practice of law. A provision for indictment by information was also included in the first major draft, as were sections creating the judicial nominating commissions and the Judicial Retirement and Removal Commission. Other features of the proposal were the funding of the courts by the Commonwealth, the jurisdiction of trial courts to be fixed by supreme court rule, and the inclusion of a district judge in each county.

The ad hoc committee sought funding from the local crime commission for full-time support staff. An initial award of $118,511 was made in 1973, and an additional $15,000 was added in early 1974. By January 1, 1975, another $150,000 was awarded, bringing the total to $283,511.

The staff was to research, compile, and disseminate information regarding the operations and needs of the court system at that time. The staff performed services for all the diverse committees working on court reform.

The work of the drafting committee continued with staff assistance provided by the Kentucky Citizens for Judicial Improvement, Inc. The committee also enlisted the support and advice of the knowledgeable legal minds in the Commonwealth to refine the draft. Every clause was closely examined by the committee. The sections on commonwealth's attorneys and indictment by information were removed from the judicial article because they violated other sections of the existing constitution.

With funds now available through Kentucky Citizens for Judicial Improvement, Inc., it was possible for the drafting committee to obtain an accurate picture of the thoughts of the people about the needs of the judicial system. Through the Criminal Courts Technical Assistance Project at the American University, five experts in the area of judicial improvement were appointed to lend guidance to the Kentucky project. It was determined that the expertise of these individuals could best be utilized by holding a conference during which those Kentuckians already committed to the movement could avail themselves of the particular insight, experience, and expert opinion of these consultants through panel discussions in which both the panel and invited participants were equally involved.

A public conference on the proposed Kentucky Judicial Article was held in September 1973. About 100 participants from throughout the state attended and discussed with the panel of experts the substance of the proposed judicial article and strategies for achieving executive, legislative, judicial, public, and organizational support for the proposal. The judicial article was discussed, criticized, and evaluated section by section by the participants. Comments by the out-of-state experts paved the way for Kentucky to devise a judicial article that would conform realistically to the wishes of its citizens and yet provide an improved system of justice.

A Kentucky Citizens' Conference

On November 29, 30, and December 1, 1973, a Kentucky Citizens' Conference for Judicial Improvements was held. The Citizens' Conference was sponsored jointly by the Kentucky Citizens for Judicial Improvement, Inc., the American Judicature Society, the Kentucky Bar Association, the Kentucky Circuit Judges Association, the Kentucky Judicial Conference, and the Kentucky League of Women Voters. At the invitation of Governor Wendell H. Ford and Chief Justice John S. Palmore, approximately 140 citizens convened for three days of intensive study of the Kentucky court system. At the conclusion of the conference,

a consensus statement was issued that contained recommendations to the drafting committee. The statement declared that "Kentucky needs a unified, centralized, court system under the administrative control of the highest appellate court with appropriate rule-making authority."

An ad hoc committee of the Kentucky Citizens' Conference for Judicial Improvement was formed. The membership was composed of conference participants who later became members of the Board of Kentucky Citizens for Judicial Improvement, Inc. Its responsibility was to "take steps necessary for the establishment of a permanent organization which would examine the recommendations of the Conference and adopt a plan of procedure for action and fulfillment." Inherent in that charge was a distressed feeling that the present movement might not succeed in its attempt to secure passage of a new judicial article.

One of the most valuable tools utilized by the drafting committee to complete its work was a public opinion poll. Under the auspices of the grant awarded to the Kentucky Citizens for Judicial Improvement, Inc., an agreement was entered into with John F. Kraft, Inc., a public opinion polling organization, to conduct a survey of "Adult Attitudes in Kentucky toward Kentucky's Court System and Judicial Reform." The results of the Kraft survey, completed in December 1973, indicated that 73 percent of Kentuckians preferred to have their judges trained in the law. The poll also indicated, however, that the citizens of the Commonwealth insisted on the popular election of their judges, and rejected the concept of appointment by a judicial nominating commission. Respondents to the poll favored changing the system to provide for more equitable, economical, and efficient administration of justice but were lukewarm to state funding of the system. A close study of the survey revealed a strong desire for change but some reluctance to relinquish what respondents understood to be local control of the trial courts.

Some drastic changes in the proposed judicial article were made as a result of the survey. In order to increase the chances of passage of the judicial amendment by the General Assembly and by the electorate, a decision was made by the drafting committee to provide for election of judges on a nonpartisan basis and to remove the merit selection process from the article. Some elements of merit selection were retained, however, in the provision for filling vacancies through judicial nominating commissions. The concession was not as significant as it may have appeared, because experience had shown that nearly 50 percent of Kentucky judges initially reached the bench as the result of a vacancy.

Another major change in the draft was made for logistical reasons. Provision for a district judge in each county had been included in order to preserve the tradition of local courts and also to ensure the delivery of justice by judges trained in the law. Realizing that attorneys would not be

available to stand for election in many of Kentucky's 120 counties, the drafters provided an alternative. They made the judicial districts contiguous with judicial circuits, and in multicounty districts provided for the appointment of trial commissioners in any county where no district judge resided. It was provided additionally that a trial commissioner should be an attorney if one were qualified and available.

Submission of Judicial Article

After having been disseminated by the drafting committee to all the various committees involved, the members of the bar, and interested citizens, the proposed judicial article was drafted into bill form and submitted to the Kentucky General Assembly on February 4, 1974.

The bill was reported favorably out of the Senate committee and was passed by a slim margin. It was sent to the House of Representatives and referred to the Elections and Constitutional Amendments Committee for similar action.

During this same legislative session, attempts were being made to rescind the Equal Rights Amendment (ERA), which had been ratified during the previous session. Opponents of the Equal Rights Amendment were using any method available to secure a vote for recision, and efforts were made in committee to withhold the judicial article from the floor of the House until committee approval was obtained to rescind the ERA. Supporters of the judicial article who were members of the committee agreed to report the ERA measure out of committee in return for a favorable return on the judicial amendment. The article was approved by the General Assembly for a vote by the people in November 1975.

One of the first projects undertaken by the Kentucky Citizens for Judicial Improvement was the establishment of a speaker's bureau, composed primarily of judges and members of the Kentucky Bar Association. Speaking engagements were actively solicited from every civic and service organization in the state. The speakers were provided with copies of the judicial article to distribute and also with information kits that included sample speeches for use when addressing any type of audience.

The Kentucky Bar Association appointed a Judicial Article Committee in late 1974 to work closely with the staff of the Kentucky Citizens for Judicial Improvement. Staff members were invited to participate in nine regional meetings of the bar association. The Judicial Article Committee was later expanded to provide for judicial article chairmen in each county in the Commonwealth.

Kentucky Citizens for Judicial Improvement, with joint sponsorship by the Kentucky Bar Association, conducted a series of regional seminars

in key locations across the state. Response to the seminars was positive, although attendance in some cases was very low. Serving as panelists were judges, lawyers, law professors, and members of the League of Women Voters. The publicity generated by the seminars was excellent, and the participants left with the knowledge necessary to return to their communities and to educate their neighbors.

In addition to the regional seminars, the Kentucky Citizens for Judicial Improvement provided assistance in planning and arranging similar public meetings for the League of Women Voters, the Council of Jewish Women, Kentucky Federated Women's Clubs, and local bar associations. Over 500 industries and manufacturers were contacted; this effort resulted in the dissemination of more than 25,000 brochures in paycheck envelopes to their employees.

Organizational support was supplemented by focusing on formal education programs at the secondary and undergraduate levels. Lesson plans and program materials designed to help the individual teacher prepare a comprehensive lecture on the subject of judicial reform were developed for both levels. Some type of exposure to the judicial article was achieved on every campus throughout the Commonwealth.

Voting on the Constitutional Amendment

The total vote cast on the constitutional amendment was 395,543, with 215,419 for passage and 180,124 against. The favorable votes represented 54.46 percent of the total vote on the question, landslide proportions in any election.

Of the seven congressional districts into which Kentucky is divided, the amendment carried three and lost four. The four districts in which the judicial article was defeated were the first, second, fifth, and seventh, all rural districts in the far western and far eastern sections of the state. The amendment lost by 21,959 out of 199,205 votes cast in those four districts. In contrast, the amendment carried the third, fourth, and fifth congressional districts, which contain the state's largest metropolitan areas, by a combined majority of 57,666 out of 196,338 votes cast in the three districts.

The largest majorities against the judicial article were in the fifth and seventh districts, both of which are the mountain regions in the eastern part of the state. The area is highly conservative, having an Anglo-Saxon tradition of embracing the old magisterial system of justice. Even so, there are several counties in these two districts that voted in favor of the judicial amendment because of concerted efforts by several circuit judges and by dedicated citizens who felt strongly about the necessity for improvement of the judicial system.

Only 35 of Kentucky's 120 counties approved the amendment. The urban vote was the deciding factor. In many rural counties, however, the tally was as close as 20 to 30 votes difference, a factor that had a definite bearing on the final outcome. If the amendment had been soundly defeated in the rural areas, as many expected, the margin of majority in the urban areas would not have been sufficient to effect passage.

There were isolated counties across the state that approved the judicial amendment, surrounded by counties that failed to do so. Records of the Kentucky Citizens for Judicial Improvement indicated that most of these isolated counties were ones in which regional seminars had been held or in which there had been extensive educational programs conducted for civic organizations and in the schools.

Of all the factors contributing to the success of the judicial amendment at the polls, two joint endorsements stand out as having had a major influence on the voters of Kentucky. The candidates for governor, Julian M. Carroll and Robert E. Gable, issued a joint statement several weeks before the election in which they pledged their support of the amendment and necessary implementing legislation. The United States Senators, Walter "Dee" Huddleston and Wendell Ford, also issued a joint statement of endorsement.

During September and October 1975, the John F. Kraft Company conducted a follow-up survey to determine the major issues that had developed during the two-year period of activity engendered by the Kentucky Citizens for Judicial Improvement. The poll indicated that the electorate felt as strongly about modernizing the courts as they had in 1973, and predicted that "the judicial article is a winner."

Early in October, one month prior to the election, a new committee was formed with the sole purpose of raising money to buy advertising. This was necessary, because federal guidelines prohibit the use of federal funds to lobby for the passage of a judicial amendment. This organization, Kentuckians for Court Modernization, was composed of prominent attorneys and lay persons, whose responsibility was to solicit money for the placement of advertisements urging a "Yes" vote in newspapers and on radio and television. The media blitz began during the last two weeks before the election and concentrated on the urban areas of the state.

An analysis of the success of the judicial amendment does not produce any clearcut answers as to why the referendum was approved by the voters. Local officials across the state, who were for the most part in opposition to the change, claim that the judicial amendment would not have passed without the urban vote. Some claim that the final burst of media advertising before the November election substantially affected the outcome. An examination of the statewide survey completed in

September 1975, however, reveals that the judicial article was already a winner.

Assistance of the Press

The single most effective aid in passage of the judicial reform was the press. Numerous articles were written discussing the problems of the old system and comparing them to the proposed system. Editorial support was widespread, and statewide media coverage was given to the educational campaign. The press, more clearly than any other institution, had seen the need for substantial improvement.

The most realistic assessment of the success appears to be that education of the public to the need for judicial improvement, one-on-one contact with people, involvement of community leaders and civic organizations, and the existing chaotic situation in the court system were the most important factors in achieving change. Further, it cannot be denied that the post-Watergate era produced a desire to make changes in government that would mitigate some of the distrust generated during and after the incident.

Implementation of Reform: Strategies, Theories, and Practice

Central Staff Personnel Issues

Most court reform literature neglects the role of the staff members who prepare drafts of proposed policies and procedures for modification and approval by appropriate officials and advisory groups. This oversight is serious, because competent staff work is instrumental in the detailed articulation and implementation of court reform.

In Kentucky, the nucleus of a staff had been assembled several months before the vote on the constitutional amendment. The staff consisted mainly of lawyers and others who had diverse court-related experience. Originally funded by a discretionary grant from LEAA for planning, the staff became state funded in 1976.

Assembling an experienced group with knowledge of the problems and peculiarities of the state is critical in the development of plans and the timing of changes. A conscious effort was made to locate employees who knew the state procedures but who also had diverse experience. A former budget director for the state, a former state commissioner of personnel, a distinguished law professor, an outstanding lawyer who was the city law director in the second largest city, several young attorneys, a former statute reviser from the Legislative Research Commission, and numerous experienced state employees were assembled for the effort. Especially significant was the mix of older, seasoned employees and eager young people.

The number of staff required to carry out the responsibilities in a major reform effort is another area where there are no guidelines. The judicial article mandated abolition of all lower courts and incorporation into the court of justice of all clerks, court reporters, judges' secretaries, and court administrators within two years. Assessment of the tasks to be accomplished and the period in which action had to be taken was essential in determining the number of staff required. Since it was not possible to predict fully the workload and the time needed to conduct research and make recommendations, we reserved funds from the outset to be able to meet the unknown problems as they arose. Much reliance was placed on LEAA funds because they were tied to specific projects such as records management, court facilities, and accounting.

Recommendations were made by visiting administrative directors of the courts for North Carolina and Oklahoma, the regional director of the Southern Regional Office of the National Center for State Courts, and The American University technical assistance consultants. These recommendations proved to be quite valuable in developing the office to manage the new system.

The legislative program to implement the new article covered more than 20,000 separate statutes, which also affected each aspect of county government. The courts most affected were totally locally funded and operated. Using computer word search, the scope of the legislative program was revealed. By inquiring about the words "judge," "court," and "clerk," over 12,000 statutory references were identified. Staff were assigned by subject area and required to produce an outline of areas affected by the judicial article. The staff then reviewed the outlines and developed issue statements, with recommendations for changes on each topic.

Background references such as the ABA Standards, The American University technical assistance reports, National Center for State Courts reports, and reports by the American Judicature Society were relied upon in developing specific recommendations. Law review articles and management reports from other states provided additional guidance. These reports were presented to advisory committees for final recommendations.

A key element in this period was the dynamic relationships among the staff and the client groups (advisory committees). The intense pressure from those opposed to court reform had the effect of solidifying the staff. The identifiable outside opposition was coupled with opposition within the court system. Many judges were not pleased with the change, because historically they had enjoyed complete autonomy in managing their courts. We were constantly confronting rumors generated by certain influential judges and clerks, attempting to discredit proposals being considered. These cross-currents were ultimately quite damaging to

the opponents' best interests as will be seen in other sections dealing with personnel.

Planning

Most periodicals advocate clearly defined goals and objectives in planning, This author adopted the exactly opposite view, because the opponents clearly outweighed the proponents in volume, if not in influence. One way to balance the situation was to work regularly with the advisory committees without making major pronouncements. This approach has its problems but may be useful in a highly emotional atmosphere. Further, each staff member was involved in planning. This kind of involvement is instrumental to accomplishing goals. No special planning unit was created, because it was our intention to make those responsible for planning the change also responsible for managing that area of concern upon implementation.

The planning methodology used was to develop program goals and objectives, to link them with a specific time frame for accomplishment, and to specify the staff people responsible for each step. This plan advised the whole staff of the work anticipated and who was involved.

Weekly meetings of all staff, clerks, and secretaries were used to review progress. This review gave each staff member the benefit of each other's effort and a view of the overall progress. The nucleus of the planning staff remained in the administrative office of the courts. The continuity of experience has proven to be very valuable in the ongoing management of the courts.

Decision Making

Over 200 people reviewed the staff work in the planning stages. The final decisions were made by the advisory committees, the supreme court, or the General Assembly.

The method of presenting materials was designed to enhance the advisory committee meetings and to offer specific recommendations. Analysis of each issue was followed by a specific recommendation, allowing the committees to keep track of decision making and to maintain an active role in the process.

Much time was spent on the decision-making process. Knowing when to precipitate a major decision or a minor one required much reflection and strategy. Close coordination with the governor's chief of staff allowed for close monitoring of the progress and the problems. Differentiating the significant and minor problems became a major task as opposition intensified before the special legislative session.

Task forces working in the office met regularly to discuss problems and develop recommendations. The primary emphasis was on the legal structure of the courts. A mistake in judgment was made at this point,

because there was not a sufficient appreciation of the administrative dimension of the change. Most attention was paid to general structure but not enough to detail. Specifically, the staff did not anticipate the magnitude of the tasks of providing for items such as supplies, forms, and equipment. Problems that later became apparent could have been anticipated had the administrative staff been more involved in this area.

Number and Location of Judges

The publicity preceding the adoption of the judicial article centered on having a judge in every county. This publicity was directed at satisfying the perceived need for each county to have its own judge. The possessory nature of this interest reflected the intent of local officials to control their own judge. Local control is a meaningful issue, particularly with courts. The old maxim that most people want justice for everyone else and mercy for themselves was precisely the point in this debate. The threat of a judge from an adjoining county coming to do justice created a sense of unwelcome impartiality. Adding to this controversy was the introduction of the theme of government being taken from the people. Correcting excesses or an improvement in the quality of service emerged as less important than the emotional issue of local control.

Historically, judicial positions in Kentucky had been authorized for political reasons. Rarely was any consideration given to comparisons of workload, an oversight that resulted in too many general jurisdiction judges and a maldistribution of the work. These problems, magnified by the 56 different districts, were particularly perplexing because there had been a similar allocation of support staff throughout the court system without regard to relative need.

The advent of the district court system provided a singular opportunity to allocate judges on the basis of comparative workloads. It was also quickly apparent that the politicians had many ideas about how this distribution of judicial resources should be accomplished. The alternatives ranged from a judge or judges in each of the 120 counties to approximately 90 judges for the state.

In contemplation of the problem of determining the number of judges, the secretary for the Department of Finance was persuaded by the author to fund a weighted caseload study for judicial and nonjudicial personnel. The purpose of the study was to provide an objective analysis of the personnel needs for the whole state, in order to produce an unbiased recommendation on personnel needs and to provide a comparative base for the future.

The experience in California courts had indicated that the weighted caseload approach provided a systematic method for addressing this perplexing problem. Although total agreement with this approach was

not expected, the needs outweighed the risks. There was disagreement within the judiciary, the administrative office of the courts staff, and the clerks' ranks about the study and its usefulness, which later diminished its credibility. Most of the opposition came from people who were unfamiliar with this approach.

The major obstacle to a successful study was the availability of the caseload information necessary to make projections. Field surveys were undertaken to gather statistics from which to make predictions. It was difficult to rely on these data, since there had never been any organized effort to collect lower court caseload information. Since many aspects of the fee system were tied to numbers of cases, the case figures reported tended to be inflated. Specifically, prosecutors and clerks were remunerated on the basis of the number of indictments. These figures were translated into the number of cases, contrary to the method of counting by defendant.

Ten counties were selected for in-depth analysis on which the projection for the rest of the state would be based. An index of typical factors found in all counties was used to determine which counties would be selected for the study. The selection of the study counties was also premised upon the existence of information systems and the degree of cooperation available from the local officials. Generally, everyone, except in Jefferson County, was quite cooperative. In Jefferson County (Louisville), the probate commissioners, who had a highly lucrative business on a part-time basis, did not provide information as required. Some commissioners made more than $30,000 a year for part-time jobs.

For a period of one month the lower courts reported the time they spent on each matter before them. These reports were tabulated and then weights by case type were developed. The planning staff was cognizant of the problems with the accuracy of the statistics and evaluated each district's results independently. Where it appeared that districts of similar population had widely disparate results, adjustments were made based on personal knowledge, field visits, or consultation with local officials.

The results of the study were released to the public, the advisory committee of judges, and the legislature. Considerable debate resulted. Some people approved the results as sound, while others criticized their every aspect. Again, some judges disputed the approach and therefore attempted to discredit the results.

The total number of judges recommended by the study was 123. The supreme court evaluated the study and made a few minor adjustments but finally submitted the request for 123 judges. The governor advocated 92 positions. A legislative proposal called for 176 positions. Heated legislative hearings ensued, but the legislature finally enacted a compromise by creating 113 positions to initiate the district court system in 1978.

It was closer than Kentucky had ever been to having a reasonable balance between the number of judges and the work of the courts. Since that date, one position has been added, and it appears that in 1980 more positions will be created. Additional judgeships will probably be created in those districts where two or more judges were originally recommended but were not authorized. The number of judges remains controversial in many areas. Some people continue to demand "their own" judge for each county.

A similar approach to the same problem still provides the best basis for a decision in what otherwise becomes a political donnybrook. Emotion and community pride rather than detachment and analysis tend to dominate discussion in this area. Although there is room for these factors, each must be weighed before adopting a position.

Trial Commissioners

The judicial article provided that in any county in which no district judge resided there would be a trial commissioner, whose duties would be prescribed by the supreme court. These commissioners were required to be attorneys, unless there were none qualified and available in the county. The debate centered on whether the commissioners should have the adjudicatory powers of a judge.

Some advocated that the commissioners should have full judicial powers, since that would be much cheaper than having full-time judges. It also was contended that the trial commissioners should be allowed to practice law. The supreme court thought the trial commissioners should have limited duties and not be permitted to adjudicate cases.

A unique meeting in the supreme court conference room between the members of a joint judiciary committee and the court provided the forum for the final resolution of the debate. The result was that the trial commissioners were left with limited duties and the supreme court committed itself to working closely with the General Assembly in meeting any special needs of any county. To date, there are 79 trial commissioners spread throughout the state. Trial commissioners have been allotted to counties where there is too much work for one judge or where there are unique geographical characteristics in the county. Commissioners have also been approved to provide judicial services to communities far from the county seat where requiring the public and the police to journey that distance is too burdensome.

Clerical Personnel

The weighted caseload approach was taken in determining the number of needed clerical personnel. The clerks had been fee officers and they

paid their deputies out of the fees. No personnel system existed for the clerks' offices. In fact, no one could determine precisely how many deputy clerks were working in the clerks' offices. Many surveys, field visits, and ambiguous figures provided the background for a continuing debate among the clerks, the planning staff, and the legislature. Clerks were an independent political body that was integrally involved in the local power-brokerage and patronage system.

The rationale for study in this area was the same as for judges. A factor that existed here and did not exist with district judges was resistance to change. Many clerks resented the new duties and any involvement with the state. In fact, many of the clerks tried to discredit the study by indicating they did not need so many people as the study recommended. This position was taken partly out of ignorance: the clerks did not understand the study nor did they fully appreciate the duties that would be placed upon them, and without their support a poor result was inevitable. The legislature authorized only 200 additional positions to run a system replacing one that had employed more than 1,200 people.

During the budget hearings on the number of personnel, the chairman of the Appropriations and Revenue Committee reported that the committee had consulted with a leading judicial reformer, who said this kind of study was not reliable. Since no other state had taken this approach to determine personnel needs, that would seem a reasonable position. Many other states that had undergone judicial reform, however, had "grandfathered in" many of the existing personnel; this was not being done in Kentucky. In addition, more sophisticated states had established personnel systems, which Kentucky lacked.

Seven additional sources of personnel information were relied upon in developing the statement of personnel needs. Those pieces of information: social security report of wages; state retirement system report of wages; monthly financial reports from the circuit clerks to the AOC; caseload reports; current and future circuit clerk duties; detailed job descriptions provided by circuit clerks; and the 1977 salary survey done by Associated Industries of Kentucky (which provides accurate and extensive salary comparisons by Kentucky employers). In addition, field visits to each clerk's office provided information about such matters as the location of offices and adequacy of space.

This point is worth elaborating, because personnel costs constitute almost 75 percent of the cost of the court system. Judgments made regarding these costs are crucial, for they will obviously affect how well a system can perform. Legislative knowledge on this subject was very limited, because the legislature had not been required previously to pass on this part of the court's budget. A substantial educational effort was required to acquaint the members with the operations of the court.

When the General Assembly acted upon this erroneous advice and appropriated sufficient funds for only 200 additional jobs, it was obvious to the staff of the administrative office of the courts that this conservative funding would be clearly inadequate. Meetings with state officials, including the governor, were held to apprise them of the effects of the funding level on the operation of the courts. The governor agreed to permit the expenditure during the first three months of the new budget of all monies appropriated for the first six months. This agreement provided the minimum adequate staffing level for clerks. He further agreed to support a supplemental budget request to provide the additional necessary funding. The statutes granted the elected clerk the authority to hire and fire and gave the administrative office of the courts the authority to determine the personnel numbers and qualifications. Thus a joint effort was required to arrive at the number of personnel for each clerk's office. Since that time, the central staff have travelled frequently to each locality to discuss personnel needs with the clerks and to arrive at a joint statement of need.

Court Reporters and Recording

Court reporters historically had been independent contractors who received funds from the county. Reporters in the principal cities received higher salaries than their counterparts in the rest of the state. No examination or certification process existed for anyone taking these positions. Reporters also had substantial amounts of time to engage in private work.

The state would not authorize full-time pay for a job that required four to eight hours a week in a courtroom. Requirements that the court reporters report to the judges or court administrators were opposed by members of both parties. Further, little information was known about the reporters' work demands. Communications were inhibited by the dearth of reliable information.

Reporters were classified by the administrative office of the courts personnel and compensated according to the state pay scale. They were paid for transcripts for indigents. Inadequate funding at the outset plagued the effort. Decisions to raise or lower salaries were made on the basis of funding and correcting inequities between and among all personnel. Negotiations to create a contractual arrangement with reporters, who would then maintain their private businesses, were not successful. Planners contemplating change might well find this one of the most difficult areas to manage.

Alternatives to court reporters have successfully been explored and instituted. Several circuit courts are now using tape recorders. Judges' secretaries operate the recorders and transcribe the tapes.

In district court the decision was made early to utilize tape recorders

because the accuracy of the record could be assured with a tape recorder. This was clearly the wisest fiscal choice. The availability of competent court reporters could not be assured; therefore, plans were developed to install tape-recording devices. Competitive bidding and testing of all makes of four-channel recording devices were carried out by the administrative office of the courts. After a committee of judges and clerks selected the firm of Gyyr Odetics to provide the machinery, each machine was used by six courts for several weeks.

There was a 9 percent mechanical failure rate for the machines during the first year of operation. Most of the problems were caused by the operators; the field visit log demonstrated that more training of personnel was required.

The untranscribed tape from the district court is taken to the circuit court as the record on appeal. The circuit judge listens to those sections of the tape on which the appeal is based. Copies of the tape can be made for all parties at a nominal cost. There is no excessive delay in the process, and it is a very economical way to process appeals.

Kentucky has the largest installation of tape machines in the United States. Even with the problems noted above, the machines have performed up to expectations. The number of appeals from district court, 671 out of 600,000 cases, clearly demonstrates that this decision was the proper one from the standpoint both of cost and of accuracy.

District Court Jurisdiction

The constitutional amendment provided that the General Assembly would determine the jurisdiction of each court. The former lower courts had jurisdiction over juvenile cases, misdemeanor, traffic, probate, and civil issues up to $500.

The consensus was that the district court jurisdiction should be identical with that of the former lower courts. Some observers, however, wanted to increase the civil jurisdiction from $1,000 to $5,000. This dramatic increase would have had a significant impact on the case filings in circuit court and possibly would have overloaded the district court.

In order to provide accurate information to advisory committees and legislative bodies, the staff visited 10 sample counties and surveyed their case filings for a six-month period. After reviewing the information, the General Assembly decided to adopt the limited proposal and move the jurisdiction to $1,500. The result has been the shifting of 25 to 30 percent of the civil cases from circuit court to district court, as predicted in the survey.

Another proposal was made that would have consolidated the treatment of family issues in one court. Many conflicts had arisen because the former lower courts had jurisdiction over divorce, child

custody, adoption, and termination of parental rights. This split in jurisdiction often found members of the same family with two entirely separate support orders for different children. This legal red tape caused unnecessary perplexity, anxiety, and stress to many families.

The staff recommended that juvenile matters be placed in the circuit court, thereby consolidating all family issues into one court and eliminating the potential for conflicting orders. As a result of vociferous objections from the circuit judges, who simply did not want these cases, this proposal failed and the district court retained juvenile jurisdiction. Despite the decision, the issue remains a challenge for future reformers.

Since criminal misdemeanor and traffic jurisdiction had been conceded to be properly in the district court, there was no serious discussion on those subjects. Parking violations, however, were removed from the court and became the responsibility of the city government. If a violator does not pay, the city has the right to file a complaint and prosecute in district court.

There was some discussion on whether probate jurisdiction should be included in the court system. Many county judges wanted to retain these matters. Again it was argued that these cases properly belonged in the court indicated in the constitution, and they were therefore placed within the district court's jurisdiction.

A small claims division of district court was created for the consumer. This court has proven to be very popular with the general public in dealing with "minor" cases. A limit of 25 filings per year was placed in the statute, however, to prevent abuses by business interests. In summary, the General Assembly created the following jurisdictional limits in the district courts: small claims up to $500, traffic, misdemeanors, probate, juvenile, and civil cases up to $1,500.

Court Operations

Immediately before the implementation of the new court system, there was an opportunity to evaluate other major dimensions of court operations. The areas of concern included filing fees, juries, and traffic laws.

Filing Fees. The courts in Kentucky had relied upon fees for their financial support. This factor led to the development of numerous practices among attorneys, lawyers, clerks, and judges that needed close examination. The cost or fee system was tied to each item of work; pieces of routine work were often characterized as significant, thereby commanding a separate fee.

This system also fostered differences among counties. It was often said no two clerks would charge the same amount for the same work. In fact, the filing fees in the 120 counties varied from $20 to $70. Complicating the picture was the fact that the prosecutor also derived fees from each

criminal case. This archaic method of funding government services presented a picture of cumbersome, unaccountable, and confusing financing understood by only a few. Abuses were so commonplace that they were an accepted way of doing things.

The constitutional change, however, required that the courts be uniform in administration and operation. Bringing about uniformity was complicated by the demand for fiscal-impact determinations of each recommended change. Specifically, at times the executive and legislative branches were more concerned with the costs of the new system than they were with determining and resolving the differences in practices among counties or with providing improved services. This overriding concern forced the staff to analyze the change to generate funds for the state treasury. Repeated statements to the effect that courts should not be required to pay for themselves fell on a deaf audience. This problem was particularly acute because most people viewed the previous system as financially self-supporting.

A survey of other states' legislation in the area of filing fees revealed a wide disparity of approaches. The North Carolina example was useful in its simplicity and was used as an initial model. In Kentucky a flat filing fee intended to cover all expenses for civil litigation was fixed at $70 for the circuit court; additional fees for jury trials were instituted. This figure was developed after a study of average costs per case was presented to the General Assembly. In fact, the results of the study indicated the average costs in the metropolitan counties to be more than $100.

The abolition of the step costs and fee system further provided an opportunity to reevaluate the accounting system used by the clerks of court. The transition from a fee system to a simplified accounting system was a major goal of the reform.

Court reform literature often neglects the clerks of court and their problems. The AOC staff spent more time developing the administrative procedures for the clerks than for the judges, because the clerks constituted the most significant obstacle to change. Their functions increased from being only the clerk for the general jurisdiction court to being the clerk for all the municipal and county court operations. Further, they had not run for office anticipating these expanded duties that were thrust upon them. Gaining their support and cooperation was essential to successful implementation of new records-management procedures and new accounting and personnel procedures.

The local officials had developed guidelines for local fees but they were next to useless for accounting purposes. The Commonwealth of Virginia had recently completed an accounting study for its clerks. The similarity between Kentucky and Virginia was of real value in assessing

examples to be considered. Communications with officials in Virginia disclosed their satisfaction with the system.

A grant of $90,000 was secured from LEAA. After competitive bidding, the Arthur Young Company was selected to devise a uniform accounting system. An advisory committee composed of clerks, judges, and legislators was created to guide the study. The Auditor of Public Accounts and members of the State Finance Department also served on the advisory committee. Considerable coordination with the state treasurer was required.

Upon completion of the study and field testing in October 1977, regional meetings to train clerks in the new procedures were conducted by AOC staff using problem-solving approaches as a teaching tool. Regional field auditors from the state auditor actively participated in each program and followed up the training with field visits.

A follow-up grant was approved for purchase of the necessary equipment to implement the accounting system. A considerable debate with LEAA ensued over whether automated cash registers constituted EDP equipment under LEAA guidelines. This debate delayed payment for the equipment for five months; it was finally approved only after state funding had been secured.

The accounting system has been an unquestioned success. The clerks who most opposed the change are now its principal proponents. The fiscal integrity now gives them the security to manage their affairs with more certainty. This system also has enabled the local courts to provide public information on court operations that previously was not available. Many local newspapers publish quarterly reports on the courts' fiscal operations.

Most of the impatience with the legislative process came from the absence of sound financial information. Taking a cue from this interest, the staff placed special emphasis on developing an accounting system that would immediately demonstrate the system's improvement to the public and legislature.

The legislature convened during the new system's first month of operation. The production by the staff of documented information marked the first time firm data had been presented to the public and General Assembly. Achieving dramatic results early aided in setting the stage for developing an appreciation of the new court system.

Juries. The jury legislation had not been reevaluated in many years before 1978. Under the new system the clerk served both circuit and district courts. This fact required an analysis of the jury. Historically, each judge had called his own jury; cooperation among judges was uncommon. In fact, many judges were chagrined that this analysis was done, because they relied upon the jury for reelection purposes.

Surveys of all other states' legislation were made to identify common

practices and successful ideas that have improved jury management. These surveys revealed few common patterns. The legislation was drafted with jury pooling as the central purpose. Legislative committees drafted a different version of the jury legislation, based on distrust of clerks and judges. The committees' proposal embodied a highly complicated method for jury selection, but provided no funds for implementation. This bill would have complicated the selection process with bingo-type machines.

The Judicial Council developed for the supreme court some administrative rules of jury management that explicitly contradicted the legislation. The supreme court concluded that certain aspects of jury management are matters of procedure subject to the rule-making authority of the court; therefore, rules were necessary for the orderly management of the court.

Jefferson County (which includes Louisville) initiated a jury pooling system one year before the effective date of the new bill. This system saved an average of $3,000 a month for each month of operation. It has received acclaim from public and press. Similar programs now instituted in Fayette County report an annual saving of $60,000.

Traffic Laws. In development of the internal procedures for the clerks' offices, it was quite apparent that there had to be a uniform approach to managing traffic citations. When each locality had its own police court, this was not a problem. The portent of different sizes of paper, and different methods of organizing the information coupled with the obvious need for uniformity, required the development of a uniform traffic citation.

An even more significant factor in this area was the absence of accountability in the previous system. The system could not report the number of cases, nor the amounts of money collected. "Fixing" tickets was an integral part of the local and state political process. High-ranking state officials could always arrange for a "filed away" citation. State legislators could count on this method of enhancing their political leverage.

Local judicial officers who catered to this approach similarly relied upon it in bestowing favors. In fact, when one died and his replacement appeared in the office, he would find drawers stuffed with old citations. In a few counties a local practice developed that "foreigners" (persons from outside the county) were the only ones who ever had to pay.

Legislation to bring order where none existed was introduced by the chairman of the Implementation of Judicial Reform Committee, Senator William Sullivan. In his opening remarks he characterized the legislation as a cornerstone to the reform effort, since removal of this practice would accomplish one goal of the reform—more accountability.

The legislative debate on the bill openly revealed the extent of the

legislators' involvement in ticket-fixing. Press coverage of this fact aided the bill's passage.

Another benefit of this system is the establishment of a series of prepayable offenses that considerably lessens the burden of the court and the public. By addressing this dimension of the court's business in an administrative manner, the court is not required to consume so many resources to process these cases.

Case Filing and Processing

The old lower court system had poor recordkeeping. In fact, the absence of standard recordkeeping procedures limited the ability of the staff to prepare, organize, and present to the legislative committees materials on the status of the lower courts. The effects of this recordkeeping system on the citizenry have been most recently demonstrated by the indictment and conviction of several former local court officials for concealing the dispositions of lower court cases and for misappropriating fine monies.

The large order and judgment books were abolished under the new recordkeeping procedures. The whole case record is stored in a file with a disposition card reflecting each step in the process. This system was designed both to improve the quality and to reduce the quantity of records. A committee of judges, lawyers, and clerks reviewed staff recommendations in each area. Much reliance was placed upon the federal and Colorado procedures.

Transition Rules

Rules entitled "Administrative Procedures of the Court of Justice" established transitional procedures as follows:

Rule 1 required that the circuit clerk be notified of the title and nature of each pending case that was docketed before January 2, 1978, at which point the circuit clerk gave it a new case number and assigned the case to the district court. Further, all other causes or proceedings pending in the courts of limited jurisdiction were deemed to be pending in the district or circuit court; the related papers were to be transmitted to the clerk for numbering and docketing, preference being given to those cases in which a party was held in detention on January 2, 1978.

The second rule provided in essence that the causes and proceedings pending in courts of limited jurisdiction should include only the following:

1. Civil actions in which no judgment had been entered and in which some pretrial step had been taken within six months before January 1978.

2. Probate actions in which application for the probate of a will, appointment of an executor, or appointment of an administrator had been filed but no final settlement had been accepted.
3. Juvenile actions in which a petition concerning a child had been filed but no final disposition had been made.
4. Criminal actions in which a complaint, citation, summons, or warrant had been issued but no judgment had been entered. In no case pending longer than one year on January 1978, however, were the papers to be transferred to the district court until a warrant had been served.
5. Finally, all other cases not disposed of and filed in expired courts of limited jurisdiction could be transferred to the district court by motion of any party.

Apart from the physical transfer of cases, other loose ends were treated by the transitional provisions. One such rule provided that where an expired court of limited jurisdiction had disposed of a case up to a factual determination, the district court judge could complete the disposition of the case. If the judge was not satisfied that he could perform those duties because he did not preside at the trial, he could in his discretion grant a new trial. If the judge did not grant a new trial, appeals from the judgments entered would be docketed in the circuit court and tried anew, protecting the right of the individual by granting him a trial before a judge trained in the law. (Such trials de novo had existed under the old system.)

Another rule related to the judgments of expired courts. This rule was necessary for motions for relief from judgments, and cases in which the convicted defendant defaulted on the payment of a fine according to the payment schedule. The moving party was required to file a certified copy of the relevant judgment, along with appropriate motion for action by the court, to bring that case within the jurisdiction of the court.

The General Assembly, in allotting civil jurisdiction to the district court, diminished the jurisdiction of the circuit court. At the advent of the district court, thousands of cases now within district court jurisdiction were pending in the circuit court. The supreme court determined by rule that cases currently pending in a court should be decided by the same court, thereby preventing the inundation of the district court.

A rule relating to the accounting and management of the money respecting cases in transition also was adopted. This rule provided that when a case is transferred to the district court, the portion of any cash deposit that exceeded the cost of services already rendered was to be transferred to the clerk for deposit in the state treasury. The uniform fees and costs in force on January 2 would then apply to all cases transferred

to the district court and all cases pending in circuit court on that date, and in no case would step costs continue to be assessed. In all cases filed before January 2, 1978, the difference between the amount of the cash deposit by litigants and the uniform filing fee, and the amount of step costs owed but unpaid, would be assessed and collected by the clerk.

The effect of these rules was to provide an orderly, systematic transition. They gave much useful guidance because they were widely distributed to the bar and the clerks in regional meetings and other meetings of the judiciary. Although many questions arose during this period, no serious or significant problems were encountered; the cases pending have now been disposed of and judgments entered.

As the date of January 2, 1978, neared, the lower court judges who were going out of business dismissed thousands of cases around the state as their parting gesture to the local citizenry. This act, not entirely based on goodwill for the new system, had the effect of providing the new judges with a relatively clean slate and a clean docket. It also provided them with the opportunity to initiate the new system with few carry-over cases.

Before 1978, there were no standard forms of filing procedures in the lower court or the general trial courts. The fee system, which provided an inducement for local clerks and prosecutors to multiply steps and inflate the case count in order to generate more money, meant that each jurisdiction had its own approach to these matters. There were over 500 forms in use throughout the state for all kinds of matters. Many of the forms were clearly contrary to the current law, but they continued to be used. The filing procedures had developed over a period of time with much local autonomy and relatively little uniformity.

The problems with the forms were identified primarily by a committee of judges, clerks, and lawyers; they were presented and discussed, and a series of standard forms was developed. The 500 forms were reduced to 75, including a battery of accounting forms that previously had not been used.

Much controversy arose regarding the issue of uniform forms, as the judges previously had much autonomy in this area, and pride of authorship inhibited the willingness of many courts to adopt new forms. Some of the judges felt the proposed forms were legally deficient.

Although these problems have been met and resolved, there still remains in many areas a degree of resentment of the state's intervention. This resentment is inevitable in a period of change. One year after the change this sentiment had been reduced as people had become accustomed to the new procedures.

Court Facilities

In the early months after the passage of the judicial amendment, local

courthouses throughout the state had four attributes:

1. There was no relationship between local government and the state government, except that a circuit court was located in the courthouse. Thus, there was no mechanism for change, improvement, or management, beyond often-scarce local resources.
2. There were no design criteria or standards for court facilities. This was due in part to the lack of experience with the whole new district court level. There was also no mechanism for adopting national court design principles, except through occasional contact with the architect.
3. The physical plant in most counties was unable to accommodate a district court system in addition to the existing circuit court system.
4. Further complicating most of the early interactions between the state and local governments was the constant resistance to change and the concern over the changing role of local government created by the new amendment.

Over the next two years, the relations between state and local governments improved. The major improvements came as a result of developing mechanisms for directing resources into local court facilities.

Several philosophies and role models were examined before the Special Session of the General Assembly in 1976. The General Assembly was unable to set a clear policy with regard to court facilities. A mixed approach toward putting state resources into county property was the result of the legislation and budget document. One million dollars was provided to compensate for court space. The existing total court space was barely over one million square feet. Since it was impossible to rent that much square footage, a fair market value rent was offered only for space that had not been used for court purposes before.

The administrative problems and inequities of this approach soon became apparent. Those who had in the past provided poor facilities often got more than those who had recently constructed a new building. Further, there was little stability in such an arrangement, because of the whims of negotiations and disparities among local real estate markets. When one county found what the neighboring county had received, the demands of the former in the negotiations were related to that knowledge. Moreover, this method required a state lease, which in turn mandated that the state fire marshal inspect and approve the use of the facility. Most court facilities could not pass a fire inspection, and this failure was a major deterrent to arranging the facilities.

During the 11 months before implementation of the judicial article, the staff negotiated and arranged for space in 150 localities, fostering the construction of several new court facilities to house an entire district court.

The chief justice recognized the problems with this technique and requested the staff of the administrative office of the courts to develop alternatives. A review of the method that the federal government uses to finance local post offices provided the idea for the present legislation. The federal Office of Management and Budget aided staff in its development.

In the General Assembly Session of 1978, the relationship between the state and local governments was changed; the state began to pay its fair share of both operating and capital costs. The state kept the right of prior approval over additional capital expenditures, but all control, management, and ownership would remain with local (county or city) government. The exceptions to this pattern occurred when leasing of privately owned space was the only option available.

With the essential question answered of who was responsible for what, the legislature also approved the necessary financial means by providing about eight million dollars for facility reimbursements during the ensuing two years.

The new approach to court facilities narrowed the remaining problems to a single major issue: new construction. Although over the 47-year life expectancy of a new facility, the state's share of the cost would be returned to the county, the typical cashflow requirement of the county was usually a 20-year mortgage. This meant that new construction had to be underwritten primarily with local funds; such funds often could not be obtained in the poorer counties.

Although motivation for new construction still remains a problem, the current system appeals to most legislators and local officials as equitable and realistic. The approach of sharing the burden of costs has been a major positive step in improving state and local affairs.

The new legislation also created a Court Facilities Standards Committee, which, besides developing standards, is also empowered with review of any new capital improvement costs in which the state will be asked to participate. As this committee develops and defines its role of improving court facilities, another mechanism for change will begin to affect positively the court facilities in Kentucky.

Another problem area is the ownership of equipment being used by the courts. Several attempts to find an equitable method to compensate courts for their equipment were unsuccessful. If, however, they purchased the equipment in the three years immediately preceding the passage of the judicial article, the net court revenue act assured them they would receive credit for those purchases. The state court system is now gradually replacing all county-owned equipment and returning it to the county. This process will take several years.

Returning Monies to Local Government

A commitment by the gubernational candidates in 1975 to return money to local governments elicited the support of the Municipal League and the cities for passage of the judicial article. To fulfill that promise the General Assembly enacted the Net Court Revenue Bill, guaranteeing that each local unit of government will continue to receive its net court revenue from the state.

Arriving at a figure representing net court revenue was a difficult problem. The state Department of Finance had to ascertain the level of revenue from the courts for the three years before passage of the judicial article and had to deduct the operating costs from that figure. The average of the net figures for those three years is the amount that would be returned to the local unit of government.

In the process of implementing this legislation, it soon became apparent that the cities had a low-overhead, high-rate-of-return operation: they made money on the traffic courts, which processed cases quickly and cheaply. The counties, on the other hand, had jurisdiction over matters that did not have a comparable rate of return: juvenile, probate, felony preliminary hearings, and civil disputes are time-consuming and do not generate revenues comparable to those of traffic cases.

The result of the legislation was to return approximately $5.6 million annually to local units of government, with only 15 out of 120 counties receiving funds. The remaining counties were losing money on their courts. This fair approach to cost sharing has generally been well received.

Organizing Development: Retirement and Removal Commission, Nominating Commissions, and Judicial Council

Retirement and Removal Commission. The judicial article authorized the creation of a disciplinary commission for the judiciary. The administrative office of the courts drafted the statute in constitutional language. Before deciding on the final rules and procedures, experts were invited from California, the American Judicature Society, and Alabama to meet with the commission. The results of the two-day meeting were embodied in rule proposals to the supreme court.

The chief justice requested that the judges consider adopting or making recommendations on a code of judicial conduct, which has been discussed for several years. The decision being imminent, the judges finally acted and made several recommendations. The supreme court considered the recommendations and formally approved the ABA Code of Judicial Conduct with a few changes. The court also enacted the procedural rules.

Staffing for the disciplinary commission was provided originally by the administrative office of the courts, but the potential conflict of interest required that the commission acquire its own staff. A director was recruited, and retired FBI agents were hired as field investigators.

No judges have been removed from office, but the commission has undertaken its duties in a cautious and quiet manner. Attempting to institutionalize a sense of accountability within the judiciary has been difficult, but the commission's perseverance and the support of the supreme court have been essential to success.

Judicial Nominating Commissions. A vacancy within the judiciary activates the Judicial Nominating Commission. The commission publicizes the vacancy in local media and receives applications. The commission may interview the applicants. Generally it meets on a date certain to discuss three nominees, whose names are sent to the governor for appointment.

The staff of the administrative office of the courts surveyed another state with similar provisions, to recommend to the supreme court procedures for the commissions. The initial approach was not to try to write numerous detailed rules but rather to explore a variety of procedures before arriving at the specifics. This approach has worked smoothly; after two and one-half years' experience the supreme court recently published the first rules.

Judicial Council. The Judicial Council existed before the judicial article, but its activities have been quite limited in scope and quantity. A new statute was enacted in 1976 to create an advisory body to the supreme court.

The council was envisioned as a sounding board for ideas and recommendations for improvements. It is both a study group and a consultant on anticipated changes. It is composed of the chairmen of the judiciary committees in the legislature, four circuit and four district judges, the chief judge of the court of appeals, three members of the bar, the president of the circuit clerks association, and the chief justice as chairman.

The council has met every two months for the last two years. During that time it has been instrumental in developing regional court administration projects, reviewing the court recordkeeping and accounting systems, recommending rule changes, and reviewing selected statutes in order to improve the courts. It provides a forum before which members of the judiciary may express their concerns about the courts. The agenda is sent to all judges two weeks before the meetings, and minutes after the meetings. There is much consultation among the judiciary on activities of the council.

Stages of Implementation

This section discusses how the foregoing changes were instituted, and with what degree of success. Education is a very significant aspect of translating the reform from paper to reality. The required changes of behavior have not occurred within certain levels of the judiciary, but have occurred in the offices of clerks and with the new judges. Realizing that the simplest, most direct method of conveying large amounts of information was to develop manuals of procedure, the staff set out early in 1977 to produce these for judges and clerks. Through this method, uniformity of practice also could be achieved.

Staff assigned to records, forms, and internal operations were responsible for working with a committee of clerks and judges in developing the circuit clerks' manual. The manual was the first effort to bring administrative uniformity to clerks' offices. Field visits a year after it was developed have demonstrated that those offices utilizing the manual are the best organized; conversely, offices not utilizing the manual are functioning poorly. The supreme court incorporated the clerks' manual by reference in the rules, thus making its use mandatory among the clerks. Enforcement of compliance with the manual has been cautious.

The accounting manual was initiated with a similar purpose. The supreme court also incorporated the accounting manual by reference in the rules of court. Compliance with accounting procedures is more closely monitored by the administrative office of the courts staff than is the circuit clerks' manual, because of the concern for fiscal integrity.

When the manuals were completed, regional seminars were conducted for all clerical personnel. These seminars used an Ardenhouse approach, with actual problems being discussed and with the manuals used as references in solving the problems.

Since there were no incumbent district judges, the materials for them were developed with the advice of some existing lower court judges, several unopposed candidates, and general jurisdiction judges who had served in the lower courts. A bench manual describing the procedures and statutes was developed by the Department of Justice's Bureau for Training at the request of the administrative office of the courts. The manual was designed with a series of checklists for the judge to use from the bench. It was intended to be particularly useful to new judges unfamiliar with their position.

In addition, one full week was devoted to a special training program for the newly elected judges before they took office. It was designed to provide a review of the law on all subject matter within their jurisdiction, court administration, judicial ethics, pretrial release, misdemeanor diversion, and juvenile services. It also provided an opportunity to develop a closer unity among the new judges than had existed in the

circuit courts, because the district court judges were all taking office simultaneously.

Evaluation Criteria

Court reform literature is littered with articles and notions about evaluations. Current articles center on the absence of comparative information about the situation before and after court reform. Unfortunately, most of the information that the social scientists wish to have is not readily available in a lower court system that keeps no formal records. In the recently published *Court Unification History: Politics and Implementation,* Larry Berkson and Susan Carbon discuss and recommend several criteria as applicable in evaluating the success of a court-reform effort. This section discusses each of their suggested criteria and their applicability to Kentucky. Although some of the suggestions cannot be readily answered owing to the absence of sound data, an attempt will be made to apply their criteria to the Kentucky reform. The following criteria are suggested.

Accountability

One of the foremost dimensions of Kentucky's court reform and court unification has been the creation of accountability in the whole system. Before the judicial article, no one person or group was responsible for the operation of the judicial branch. The passage of the judicial article and the clear vesting of responsibility in the supreme court and the chief justice have brought accountability for the operation of all the courts. This accomplishment has provided a forum for the assertion of leadership and direction by the chief justice in managing the entire judicial branch of government, consisting of more than 1,800 employees, judges, and clerks. The supreme court, in assuming its supervisory role over the entire system, further identifies itself as the agency responsible for the operation of all the trial courts. This transformation from a fragmented, locally autonomous system to a responsible and accountable statewide system has had far-ranging effects. The effects range from concern for how and where money is spent to the rate of disposition of cases and to personnel and budgetary matters. Thus, the legislature and public have made one body a point where they can make inquiries or register complaints when they feel impropriety exists.

Another significant dimension of accountability is the establishment of the Judicial Retirement and Removal Commission. This commission in the first year has disciplined judges whose behavior was not consistent with the Code of Judicial Conduct, or who did not comply with the law of the state. Its existence, although sometimes criticized by the judges, has brought accountability into the system in areas where none had

existed. Before creation of the commission, impeachment was the only means of addressing improper or illegal judicial behavior. Impeachment had only occurred once in the history of the Commonwealth, and so it was an inept tool for dealing with judges whose behavior was unacceptable.

The last areas of accountability are those of money and of case information. Uniform accounting and recordkeeping systems are major steps to resolve those issues. For the first time the courts can report to the public, the legislature, and the governor on how and what they are doing with the business that comes before them. Absence of this accountability in the past brought many of the court's actions into disrepute. In many local newspapers, the dispositions in all cases before the courts are now printed on a daily or weekly basis. This reminds the public that the courts, as public agencies, are accountable for each case that comes before them.

Flexibility

The second recommended criterion is flexibility. Under a county-funded and -operated court system, the number of judges and cases did not concern the judiciary at large; the concern was limited to one jurisdiction. The judicial article now gives the supreme court and the administrative office of the courts the flexibility to match resources with needs. This flexibility has been exercised in an unusual way in Kentucky, through the creation of administrative regions.

The regions are governed by judges elected by their peers. They are not run by court administrators but are, in fact, run by the judges. This regional concept is a highly fluid arrangement, intended to provide the flexible response required in a highly complex organization. Further, it is expected that these regions will develop into the core of an organizational structure, on which decentralization of authority and responsibility can be founded. They also increase the opportunity for the local judges to work on shared problems to benefit an area of the state.

Empirical Evidence

The third area recommended as an evaluation criterion is the use of empirical evidence to show, to justify, or to otherwise quantify the success of the reform. An example of such evidence is the number of appeals from the new district courts to the circuit court, which are taken as indicating dissatisfaction with the lower court judgment. In the new judicial system every litigant has a constitutional right to at least one appeal in every criminal or civil case. Under the old system the trial de novo method was relied upon for correcting error in the lower courts. This costly method of correcting errors has been eradicated.

In the first year of operation of the district court, there were more than 600,000 cases filed in the district courts. In only 671 cases were appeals taken to the circuit court. That only such a small number of the district court cases was appealed should be clear evidence of public satisfaction with the disposition of cases at the lower court level. This figure provides a direct contrast to the last year of the old lower courts, when there were 1,500 appeals from the lower courts to the circuit court. Although this figure may have been artificially high because of the trial de novo, the change has resulted in a savings of money to the litigants by cutting the number of appeals in half. Further, the court time of the police, the prosecutor, the witnesses, and the judge has been reduced a greater amount than that suggested by the lower number of appeals, since the appeals are on the record and not de novo trials.

The use of tape recording to make the record at the district court and of the cassette as the official record of the lower court proceedings has further expedited the appellate process and reduced the cost to the litigant as well as to the public. This appellate procedure is not common in the United States; it further distinguishes the effort that the Kentucky courts have made to reduce the cost of litigation while expediting the appellate process.

Higher Quality of Justice

Berkson and Carbon recommend, as a measure of the achievement of success, the presence of an enhanced system effectiveness and a higher quality of justice. This is a very broad category, and the author is unfamiliar with any recommended guidelines for its measurement. If the press reaction can be taken as a surrogate measurement of this criterion, local and state newspapers surveyed during the last year indicate that the response has been nearly 100 percent positive. News articles from all over the state have repeatedly praised the substantial achievements of the new court system, citing the higher quality of justice provided and the greater concern of the judges for the constitutional rights of the people appearing before them. In addition, the League of Women Voters surveyed all their local chapters and did an in-depth analysis of each of the local courts. Their preliminary report indicates that the League of Women Voters, as an impartial body, believes that the new system has greatly improved the quality of justice at the local level, and has brought dignity and decorum where none existed. If the reactions of observers are any indicator, one would have to conclude that the Kentucky court system has, to a degree, achieved the success anticipated by the reform.

Burden on Public Participants

Another recommended area for evaluation is the amount of burden

placed on the public participants. This requires a substantial amount of information that is not available. It may have been that the mere existence of countless magistrates and city police judges throughout the state presented less of a burden on the citizenry by virtue of their sheer numbers. This point may have to be conceded; but it has to be weighed (as must all others) along with the other dimensions the court system brings to bear in each case. For example, one suggested criterion is the amount of individual attention given to each case. In the old system there was no information on this amount. In fact, many of the county judges report that they gave great attention and spent lengthy periods of time attempting to consult—to mediate disputes and serve as confessors and social workers/advisors to the public. This practice may have resulted in more attention to certain cases; it is something that is hard to weigh and compare. The district judges report, however, that they too are spending lengthy periods of time with litigants in potential family disputes and other situations, attempting to resolve these problems.

This conciliation practice is peculiar to certain areas of our state, particularly eastern Kentucky where family ties and extended family relationships are a significant part of the social scene. Resolving family disputes or working with families is an integral part of every public official's life. The press of business may at times prevent the new judge from taking the time to resolve the dispute, and he is unable to bring to bear the legislative or executive functions and resources that the former county judge had available. A recent effort by the administrative office of the courts staff to measure times for disposing of cases in the district court did find they were approximately the same under the old and the new systems, with the district court taking more time in misdemeanors and civil matters.

One satisfactory measure of the burden on the public may possibly be the amount of money spent on juries. Jury pooling began in 1977 and the result of the first year was a reduction throughout the state of $100,000 in jury costs. This was achieved even while the right to a jury trial was being extended to district court, where it did not previously exist. Specifically, $2,700,000 was spent on circuit court juries in 1977 and $2,600,000 was spent on both district and circuit court juries in 1978.

Nature of Dispositions

The nature of the disposition of cases is another suggested criterion. Again, comparing the old and the present systems is virtually impossible, because we do not have adequate data on dispositions under the old system. The only comparative data available are those on uniform traffic citations kept by the state police. The nature of the traffic dispositions has changed dramatically. The state police data indicate that under the old system approximately 64 percent of the individuals issued traffic citations were found guilty and fined for violations. In the first 12 months under the district court, approximately 85 percent of the people were found guilty and paid fines.

A fair disposition system, treating each case on its merits, clearly has been established by the district court. Some politicians have expressed chagrin and dismay at the impartiality with which the judges are disposing of cases. Dispensing favors instead of justice was an integral part of the local politician's leverage. How this issue is evaluated, therefore, depends on how it is perceived. Clearly, from a judicial perspective far more integrity has been brought to the bench. From the public view, the enforcement of the law is much more effective. If one is interested in response to individual self-interest, however, then the politicians' use of the courts for their own ends might be more popular.

Legal Representation

The quality of legal representation at the local level is another issue suggested as an evaluation criterion. The public defender's office has been under great strain since the inception of the district court system. The *Argersinger* decision has never been fully implemented at the lower court level. The people appearing before the magistrates and county judges rarely had attorneys, since the right to counsel commonly was not extended to them by the county or the county judge. Thousands of people went through the system never knowing they had the right to an attorney, never knowing they had a right to contest the charges, and only rarely receiving jury trials.

Since the inception of the district court the demand for public representation has increased fourfold. For example, in Fayette County, the second largest county in Kentucky, the Legal Aid system has had four times the number of requests to provide representation to individuals before the courts. This in itself is a manifestation of the judiciary's greater concern for the constitutional rights of the individual. Further, it suggests that the system has met the public expectation of being more fair and equal in protecting the rights of the citizens.

Comprehension of Proceedings

The extent to which litigants comprehend proceedings is also suggested as a criterion. This is a nationwide issue; it is not found only in Kentucky, nor does it relate particularly to court reform. Since the schools stopped educating children about the legal process, this problem is becoming more acute throughout the United States. Many citizens do not understand court proceedings, the judicial system, or the relationship of the judiciary to the executive branch of government. Although measurement of this criterion is very difficult, it can be suggested that

because a record is made in every case and a copy provided the litigant at nominal cost ($2.00), he has been extended this right, or at least access to comprehension of the proceedings. The judges have been asked to make every effort to explain the proceedings.

Efficient Processing of Cases

An additional suggested area of evaluation is the efficient processing of cases. The rate at which cases are disposed of can be another measurement of the system's success. One way to evaluate this is the pressure put on prosecutors to dispose of cases expeditiously. Most prosecutors in Kentucky are part-time. Since the new court system's inception, the prosecutors have been complaining repeatedly about the time and work required to prosecute cases in district court. Further, they are complaining that the district judges, who are not permitted to practice law on the side, are demanding too much of them. The judges are requiring that they be in court to prosecute on a daily basis, which is much more often than the prosecutors have been accustomed to. This infringes upon their ability to handle their private law practice, which is still permitted in Kentucky.

It may be suggested that examining the rate at which cases are being disposed of contradicts the suggested criterion about the amount of individual attention given each case. Reconciliation between these two criteria is not easy. The absence of comparative information makes this analysis impossible. Two other criteria suggested are causes of adjournment and number of continuances. Neither of these pieces of information is collected by the administrative office of the courts, nor are they collected on a routine basis by the trial courts. They were not collected under the old system either.

Simplified Litigation

Another suggested criterion is simplified litigation. Under our old system we had multiple lower courts; under the new system we have a single lower court of limited jurisdiction and a general jurisdiction court, with exclusive jurisdiction in each. The clear delineation of jurisdiction and appeals has satisfied this criterion.

Central Administration

Central administration has been labelled as a major problem in court reform by authors Gallas and Saari. It has been a significant issue in all governmental reform since the 1930's. It is an issue about which there are many opinions, pro and con. Though it does not lend itself to quantifiable measures, there are several significant factors that can be used to avoid the pitfalls of central administration. One of the approaches is enhanced coordination among trial courts. Coordination is accomplished in Kentucky by regional meetings each spring and by regular meetings in the fall at the judicial colleges. This increased local cooperation among the trial courts has already shown benefits, in that successful ideas and implementation strategies at the local level have been transferred to adjoining counties.

One of the major problems at this time is inadequate local court participation in the decision-making process. This problem has arisen in part because of very tight time frames specified in setting up the system.

The supreme court, however, has authorized a change in a part of that process which is now being implemented. The court has adopted unit budgeting, the principal purpose of which is to establish an equitable, simple, and rational method of supporting requests for additional staff and equipment at the local level. This method will change the budgeting process from the previous approach, under which the budget was prepared by central staff. It should be noted that because of time constraints in the past, the budget has really been prepared centrally of necessity; the clerks and judges in the field were either not in elective office at that point or were in the process of attempting to adapt to and institute the new system. With that transition completed, an opportunity now exists for the court actively to involve more people in establishing priorities and requests for funds. While historically there may not have been much participation in this process, the trend has certainly changed toward much more open and active involvement of all concerned.

Rule-Making Practice

Another dimension suggested by Berkson and Carbon is how rule making relates to the trial courts and the extent to which it has been responsive to local needs. The major complaint from the bar is that the supreme court is too quickly promulgating rules in response to problems, rather than too slowly. In fact, many attorneys are quite distressed that the court is changing rules every two or three months. Nevertheless, it was clearly understood by the court that many things required by the judicial article should be approached by making as few rule changes as possible, by seeing how problems developed and then making necessary rule changes.

The rule-making process must also permit the local courts to initiate and develop their own local rules. This process is governed by the state only insofar as the local rules are reviewed for conformity with state rules. Thus, the local rules embody local policy and practices and establish local court procedures. Disagreements occasionally arise between the administrative office of the courts and the trial courts regarding their rules, but this process has worked smoothly. This is a further indication that successful implementation has included both local and statewide rule making.

Equitable Distribution of Resources

Equitable distribution of resources is always a problem when managing an entire system. This point is made constantly, not only in courts but in all areas of public service. It is one of the areas in which there has been notable success in Kentucky. The smallest counties, for the first time, have received from the state adequate staffing, supplies, and technical assistance. For example, the personnel of the clerk's office are compensated on a standard pay scale based on the individual's experience and qualifications. This means that those in the smallest counties are compensated for their ability, as are those in the larger counties.

The higher-caseload counties require more resources. Jefferson County (Louisville) accounts for about 21 percent of the workload of the state and receives about 22 percent of all the monies available to the system. If this example indicates that the higher-caseload counties receive adequate support, then we have also satisfied that criterion. (In fact, Jefferson County receives an even larger percentage, because at least 30 percent of the administrative office of the courts resources are allocated to that county.)

Effects on Other Agencies

Another criterion that has been suggested and should be considered is the side effects on other agencies in the implementation of the new court system. The greatest effect has been noted above; that is, the public defender's office has had an enormous increase in the demand for services as compared with that under the old system. This has led the administrative office of the courts to work with the public defender on applying for an LEAA grant to provide 25 new public defender positions in certain areas of the state. This joint effort has enhanced the cooperation between the two agencies and improved the ability of the state to respond to local needs.

The prosecutors, as noted earlier, have experienced a similar effect in the district court. They have been requested to perform more services in court than they had performed previously, and that trend is expected to continue. As long as there are part-time prosecutors and full-time judges there is an inevitable potential for conflict.

Before and After

One other recommended criterion calls for a comparison between the former and the reformed systems. This comparison, like others, is most difficult. Kentucky does have the advantage over most other jurisdictions because there were public opinion surveys prior to the judicial article. These are a readily accessible, documented source of information about public attitudes concerning the courts. Two previous public

opinion surveys (1973 and 1975) provided valuable information with regard to the public's views and expectations about courts and also identified areas for reform.

Attitude toward the change depends upon whose ox was gored. County officials who lost considerable political leverage are not pleased, although they are more tolerant toward the court reform than they were 12 months ago. The bar is pleased in some areas and not in others. Some lawyers do not like the new recordkeeping system, nor are they fond of rule making by the supreme court.

Law enforcement officials have expressed considerable praise for the reform. In their judgment the system has more integrity and has substantially reduced the political brokerage business. Also, the new system is tougher on convicted criminals and has resulted in greater use of incarceration.

The news media have been very favorably impressed, as shown by their editorials. No major newspapers have advocated a return to the old system; in fact, they have uniformly expressed affirmative support for the system.

Not everyone is pleased. The legislature drastically escalated traffic fines in 1978, as a result of the termination of an LEAA grant to support law enforcement training. The higher fines were blamed on the cost of the district court. This misrepresentation to the public no doubt left many people dissatisfied with the new system.

Conclusion

Implementation of reform has more to do with attitudes than most people realize. In the past, court reform literature has not discussed how to manage change. It was assumed that the alteration of structure by rule of statute would be adequate to produce change.

It has been learned that court reform implementation must include a substantial effort directed toward changing the attitude of system participants if one is to gain their compliance with the reform. Reform is and should be recognized as a never-ending process. Changes in the system should be continuous to maintain a flexible, dynamic judicial system. Judicial leadership must continually be seeking improvement.

"Constitutional Jurisdiction of the Florida Supreme Court: 1980 Reform"

A.J. England, E.M. Hunter, R.C. Williams

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CONNECTICUT

STRUCTURAL CHANGE AND ITS IMPLEMENTATION IN THE CONNECTICUT COURT SYSTEM

Anthony B. Fisser

The Connecticut court system is one of the most unified in the country. Since July 1, 1978, Connecticut has been able to claim attainment of that most cherished goal of court reformers—the establishment of a simple organizational structure. Since that date, the Connecticut court system has been composed of a supreme court; an appellate division of the trial court; a superior court with jurisdiction over all civil, criminal, family, and juvenile matters; and a probate court.

Two significant features describe the process of change in Connecticut's court structure. First, the change to a unified court was not the result of a single, sweeping reform proposal that, upon legislative adoption, caused abrupt deviations from established systems and institutions. Rather, it was the inevitable, conclusive step to more than 160 years of organizational evolution. All changes, including the most recent, have been achieved through deliberate and incremental steps.

The second feature concerns the development of administrative capabilities by the court organization before making structural changes. This has enabled change to be effectively implemented and, most important, to be absorbed without damage to the organization or its effectiveness.

Both features will be discussed in this article, which describes the major changes to the structure of Connecticut's court system. Following a brief, historical review, our examination will take us through periods of consolidation of numerous courts, development of administrative machinery, and ultimately to the unification of all trial courts into a single-tier court of general jurisdiction.

Anthony B. Fisser is the Director of Continuing Education, Connecticut Judicial Department. He served as Assistant Executive Secretary, Connecticut Judicial Department, from 1977–1978. Mr. Fisser received a BA degree from San Jose State University and a JD degree, with honors, from Drake University Law School.

Historical Changes in Structure

The early development of an institution contributes to part of the environment in which current decisions are made. Such a history of an institution's structural changes should be understood.

Before initiation of effective court reform in the 20th century, the Connecticut court system was characterized by legislative control of the judicial branch of government and later by the creation of local courts. Until adoption of a new constitution in 1818, the court system was modeled directly after the English system, with a number of local courts and a central, legislative body that exercised judicial review powers. Once the independence of the judicial function was established, the legislature exercised its constitutional prerogative to create innumerable courts through which that function was expected to operate. In Connecticut, the list included the following courts: general, town, particular, quarter, court of assistants, superior, justice of the peace, city, borough, common pleas, supreme, juvenile, traffic, trial justice, and county.

The First 300 Years

The earliest form of government in Connecticut was established by transferring power from the general court of Massachusetts to six Connecticut magistrates. These six magistrates, also known as the "general court," exercised executive, legislative, and judicial powers for many years, even after the general court developed into the bicameral general assembly that has continued to the present.

In 1639, the first local courts were created. These town courts had limited jurisdiction over small monetary disputes. Its members were elected annually and also acted as the town leaders. At the same time, the particular or quarter court was created to hear appeals and to conduct trials in civil, criminal, and probate cases. The particular court was composed of the governor, deputy-governor, and several magistrates. Its decisions often were appealed to the general court or general assembly.

In 1665, two new courts surfaced. The court of assistants, precursor of the present superior court, replaced the particular court as the place of trial for capital crimes and as the appellate court for the towns. The new general assembly, consisting of the governor, deputy-governor, and elected assistants, remained the final court of appeal.

The second establishment was that of a county courts system for the four counties into which the state was divided. The influence of county government and county courts endured from this time until reform efforts abolished the county system in 1961.

Two more courts were created in 1698. Probate courts heard matters involving wills and estates. A justice of the peace system was established;

four persons in each county were named justices of the peace. This system also continued until 1961.

The superior court was created in 1711. Its original five judges included the governor, or deputy-governor, as chief judge and four others appointed by the upper house of the general assembly. The superior court has operated for more than 265 years and is the only survivor of the many trial courts that have existed in Connecticut.

In the late 1700's, several city courts were established for the rapidly increasing population. The city courts had jurisdiction over civil actions arising in a city or between city residents. These courts subsequently fragmented over the next 150 years into borough, municipal, police, traffic, and town courts until their collective demise in 1961.

The concept of separation of powers in government had not yet gained a strong foothold in actual practice when the Connecticut Supreme Court of Errors was created in 1784. The court's members included the governor, lieutenant governor, and the upper house of the general assembly. Even in 1806, when the supreme court was composed of superior court judges, it lacked extensive appellate power.

Complete independence for the judiciary was achieved when the new state constitution was adopted in 1818. The Connecticut Judicial Department was recognized as rightfully performing the judicial function of government. Article 5 of the constitution declared that the "judicial power of the state shall be vested in a Supreme Court of Errors, a Superior Court, and such inferior courts as the General Assembly shall, from time to time, ordain and establish . . . ." The constitution also authorized appointment of justices of the peace to hear civil and criminal cases, with jurisdiction to be determined by the general assembly. The most important effect of the constitution was that the superior court was given the status of a constitutional court.

In 1855, the jurisdiction of the county courts was transferred to the superior court. Fifteen years later, to relieve an overburdened court, the legislature created a court of common pleas to operate in place of the former county courts. Its chief function was to hear appeals from justice of the peace courts, but its jurisdiction was increased gradually until it was abolished by the court unification of 1978.

From the mid-1800's to mid-1900's, the structure of the court system remained basically unchanged. The general assembly's interest in creating new courts waned. However, on three occasions the general assembly exercised its constitutional power to redefine the jurisdiction of existing courts. The first was to authorize in 1921 the establishment of juvenile courts for several cities and towns. Twenty years later the juvenile court system commenced operation as the first statewide system in the nation.

The second change was the initiation of an experimental traffic court

in 1929. The experiment lasted until 1961. Finally, after a study of the lower or minor court system in 1939, a trial justice system was developed in which an elected justice of the peace in a town with no other local courts was designated a trial justice.

Twentieth-Century Movement for Reform

By January 1959, as state legislators were preparing for the upcoming legislative session, the judicial system included more than nine courts, each exercising its unique jurisdiction. However, six months later the session ended with passage of a major court consolidation act that, effective in 1961, abolished all courts except the supreme court, three statewide trial courts, and the probate court. (Appendix A.)

Perhaps the major impetus for the consolidation came from the numerous studies and proposals offered by both public and private organizations. These proposals for change pressured legislators to approve the principles of consolidation as a means of improving administration of justice in the state. (It is of more than passing interest to note that this factor also existed at the time the ultimate court unification act was approved in 1978.)

Since the 1920's, the Connecticut court system has been the focus of many studies and recommendations for improvement. Ad hoc study committees, legislative commissions, the Connecticut State Bar Association, joint commissions, and the judicial department itself proposed reforms. Four of the reports had a major impact. They were produced by the Judicial Council, the Committee to Study the Minor Court System, the Commission to Study Integration of the Courts, and the Commission on State Government Organization. Each reform proposal was the result of serious deliberation by individuals having diverse interests but a common hope for improvement. Each proposal, adopted or not, resulted in constructive public debate, thereby contributing to a general public awareness of problems and the need for change.

The first of these groups, the Judicial Council, provided a constant impetus for examination of and change in the state's courts. Established by the legislature in 1927, the council was directed to make a "continuous study of the organization, rules, and methods of procedure and practice of the judicial system of the state, the work accomplished, and the results produced by that system and its various parts." It was composed of the chief justice, chief judges, the deans of the law schools of Yale University and the University of Connecticut, practicing attorneys, and a prosecutor. The council reported biennially to the governor until its demise in 1975. Its proposals resulted in many changes, ranging from specific rules and statutes to broad recommendations for structural reform of the court system.

As early as 1930, the council recommended creation of a statewide district court to replace town, city, borough, and justice of the peace courts. The main advantage of the proposal was that district court judges would be appointed by the governor and confirmed by the general assembly, thereby eliminating many problems inherent in an elected justice of the peace system. The council's reorganization plan was not adopted, however, at least in its proposed form.

In the 20-year period prior to passage of a court consolidation act in 1959, the number of proposals for reform of the lower courts increased. The Committee to Study the Minor Court System, the second major reform group, was appointed by the governor in 1941. It made two recommendations. The designation of one justice of the peace in each town as a "trial justice" for criminal cases was adopted, thereby depriving elected justices of the peace of their criminal jurisdiction. The second proposal was not so successful. It would have created a statewide court of common pleas with two divisions—a circuit division and an appellate division. Rather than create a new system, the proposal would have merged the lowest courts (i.e., most limited jurisdiction) with the existing court of common pleas.

In 1943, the Commission to Study Integration of the Courts was established by special act to study all courts and to determine the most efficient methods of reorganization into one judicial system. Despite the objective, the majority of the commission concluded that it could not recommend complete integration for two reasons: subdivisions had developed more or less independently, and the character of the Connecticut people favored individualistic viewpoint rather than centralization and integration.

In 1945, another commission declared that the existing probate system was satisfactory and that the local probate courts should not be integrated into the judicial system. However, a probate assembly composed of all probate judges was proposed, and subsequently approved, to devise fee schedules and to pass upon other matters of general concern. The probate assembly is currently in operation in Connecticut.

The fourth major study group, the Commission on State Government Organization, made the most enlightened reform proposal. The general assembly had authorized the commission to study all the functions of state government, to ascertain duplication of service and effort, to determine the most economical method of providing services, and to recommend abandonment, modification, or consolidation of existing departments.

The commission, as other study groups had done previously, noted the faults of the various lower courts but viewed the superior court and court of common pleas as generally satisfactory. The final proposal opted for a unified court system composed of five divisions—supreme court of

errors, superior court, common pleas, family court, and probate court. All lower, local courts would have been replaced by the common pleas division. Judges would have held sessions in different circuits of the court.

The commission's plan was incorporated into at least one proposed bill each legislative session for the next eight years, but never was enacted.

By 1957, reorganization, integration, consolidation, and similar words were commonly used by the public, press, bar, and court-related groups. Public awareness increased when the League of Women Voters launched a public information program to study the courts. Also, a Citizens' Committee for Court Reorganization was formed under a retired justice of the supreme court to support reform proposals and to publicize the urgency of reorganization.

Integration and Consolidation

Two major structural changes occurred before final unification in 1978 (Appendix A). The initial change, authorized in 1959 and effective in 1961, integrated the various local courts into a statewide system. The second change, authorized in 1974 and effective in 1975, consolidated the two lower courts into a single lower court.

Integration of Local Courts

As commented upon earlier, the general consensus of the public and legislators by 1959 was that the local or lower courts needed an immediate reorganization to improve efficiency, uniformity, and the quality of justice.

In the 1959 legislative session three bills were submitted, each proposing different alignments of courts and their jurisdiction. The common objective was eliminating the numerous local courts. Bipartisan political support supplemented the court reform movement. Also, the majority party and its victorious gubernatorial candidate, following campaign promises of reform, had recently taken office.

In 1959, the legislature eliminated local courts by creating the circuit court to replace all municipal, trial justice, justice of the peace, police, city, traffic, and borough courts. The circuit court would be a statewide, state-maintained, trial court and would begin operation in January 1961, following a 21-month transition period to develop rules, provide facilities, establish circuits, and appoint 44 new judges.

Consolidation

The impetus for change continued after the elimination of local courts and creation of the statewide circuit court. The twin plagues of

congestion and delay persisted, despite many improvements in administration and court procedure. The courts, as a supposed "system," presented a confusing picture to the public and the legislature. The system needed additional changes to streamline and to improve operations.

The Connecticut Judicial Department, as the judicial branch was known, was composed in 1970 of the supreme court, superior court, court of common pleas, circuit court, juvenile court, and probate court (Appendix A). A closer examination of the courts existing at that time helps in drawing parallels with structures currently existing in other states, thereby permitting constructive conclusions concerning similarities and differences. Within eight years, the following separate parts of this system would be unified successfully.

Supreme Court. The supreme court, composed of the chief justice and five associates, heard final appeals from the superior and common pleas courts and, upon certification, from the circuit court. It also established the rules of practice for all courts except the superior court. Since 1965, one supreme court justice had served as chief court administrator with the additional responsibility for directing the administrative operations of all courts. Supreme court justices were members of two constitutional courts, since they also were appointed superior court judges. The supreme court formerly was an appellate panel of superior court judges.

Superior Court. The superior court was the constitutional trial court of general jurisdiction having power to decide all matters for which jurisdiction had not been given by statute to another court. It handled civil matters exceeding $7,500, with original jurisdiction over claims exceeding $15,000; crimes in which the possible sentence could be at least five years of incarceration; and divorce proceedings. It also heard appeals from the juvenile court, probate court, and workmen's compensation commission.

The superior court consisted of 40 judges, including the six justices of the supreme court. All judges were appointed for eight-year terms, and sessions were held in 17 locations throughout the state.

Court of Common Pleas. The court of common pleas was composed of 16 judges appointed for four-year terms. The court operated in 14 locations. It had original jurisdiction only over civil actions between $7,500 and $15,000, and concurrent jurisdiction with the circuit court for matters between $1,000 and $7,500, depending upon whether the claim was for legal or equitable relief. Its appellate jurisdiction included appeals from circuit court criminal cases and administrative decisions of state and municipal agencies.

Circuit Court. The 50 circuit court judges rotated among 50 locations

in 18 separate circuits. The judges were appointed for four-year terms. The circuit court's criminal jurisdiction included misdemeanors and felonies in which the possible sentence did not exceed five years imprisonment and the actual sentence imposed was not more than one year or $1,000 fine. This court also heard small claims, motor vehicle cases, and civil matters not exceeding $7,500.

Juvenile Court. The juvenile court considered all matters involving delinquent, dependent, neglected, and uncared-for children under 16 years of age. The six judges sat in three districts and 12 facilities throughout the state. Two judges were permanently assigned to each district. Each judge was appointed for a four-year term.

Probate Court. The probate court was composed of 125 elected judges representing the same number of probate districts. The probate judges heard matters involving estates, wills, guardianship, civil mental illness commitments, and adoptions.

The impetus for additional change in both the administration and structure of these different courts continued with the publication of a lengthy article in the state bar journal. Several years later, a public citizens' group, which was called the Connecticut Citizens for Judicial Modernization, formed a Joint Committee on Judicial Modernization with members of the state bar association. The committee made a study, and its report included recommendations for change in the method of selection, retirement, and censure of judges; rule making; prosecution and defense services; and court reorganization.

The joint committee also cited problems of poor facilities, a multiplicity of administrative systems in the many trial courts, separate rule making for separate courts, jurisdiction and venue requirements that inhibited expeditious filing and handling of cases, overlapping jurisdiction, and an inefficient "bind-over" procedure that required a full probable cause hearing before transferring a criminal case from the circuit to the superior court.

The joint committee recommended the merger of all trial courts, including probate and juvenile, into a unified arrangement consisting of a criminal court, civil court, and family court. Although these proposals were not immediately successful with the legislature, the unification concept was accepted readily six years later. The final organizational structure would be markedly similar to the joint committee's suggestions.

There were four options available to reformers: a) make no changes; b) combine all courts into one unit; c) combine common pleas and superior courts; or, d) combine common pleas and the lower or circuit courts.

The first option was rejected strongly, since it was acknowledged by

legislators and reform groups that serious inefficiencies and problems did exist in the courts. The second option was rejected also. Since most concern was directed to the problems of the overburdened circuit court, it was recognized that the lowest court's deficiencies should not be added to, and detract from, the more efficient superior court. A complete unification of all existing courts, therefore, was unlikely to receive legislative approval.

The remaining options, both concerning the placement of the court of common pleas, provided the probability of a smoother organizational integration. Each option became a separate proposal. First, the Judicial Council, which continued to make recommendations since its creation in 1927, joined with the state bar association to propose the merger of the court of common pleas with the general jurisdiction superior court. The legislature, however, had created a Commission to Study and Draft Legislation for the Reorganization and Unification of the Courts. This commission cited the real or apparent existence of a caste system among judges of a "higher" and a "lower" court. It expressed concern that, whatever the reality, the public impression was that an "inferior" court dispensed inferior justice. The commission acknowledged that the easier merger would be to combine the court of common pleas with the superior court. It concluded, however, that the most immediate need was to upgrade the circuit court promptly; the addition of the court of common pleas judges, staff, and facilities would accomplish that goal best.

The reported preference of most of the 16 common pleas judges was to join the superior court, which shared a similar type of jurisdiction. At the same time, circuit court judges were interested also in an upward consolidation. Their position was strengthened by the fact that they had a greater number of judges urging approval. Also, they were the most recently appointed judges and were better able to argue their position directly to the legislature.

At the close of the 1974 session, the legislature acted. The consolidation proposal of the legislatively authorized Commission to Study and Draft Legislation for the Reorganization and Unification of the Courts was adopted. Effective January 1, 1975, the circuit court was abolished, and its functions and jurisdiction were consolidated with the court of common pleas. The only adjustments to the simple consolidation were to transfer five judgeships to the superior court and to establish a three-judge appellate session of the superior court to hear appeals previously taken to the old common pleas court. The new court of common pleas would consist of 61 judges, and the superior court, 45.

Unification

Even as it mandated consolidation of the lower circuit and common

pleas courts, the same 1974 legislature looked beyond the present and approved further steps toward unification. Although the Commission to Study and Draft Legislation for the Reorganization and Unification of the Courts had opted for the limited merger, its final report to the legislature incorporated the proposals from other groups for a more complete unification:

> The number of trial courts must be reduced in an effort to improve the efficiency of the judicial system and to improve the quality of justice in the system. The Commission further believes that, although the merger of the Circuit and Common Pleas Courts and the reordering of jurisdiction proposed will improve the efficiency of the trial courts . . . *this consolidation should be but the first step in the ultimate consolidation of all the principal trial courts into the Superior Court* [emphasis added].

Consequently, in the 1974 legislative session, the general assembly created a new commission to achieve the recommended "ultimate consolidation of all the principal trial courts." The commission's mandate was not to study the advantages and disadvantages of a one-tier trial court, but to "prepare legislation for the unification of all functions, powers, and jurisdiction possessed by the court of common pleas and juvenile court, in the superior court and [to] present legislative drafts to the 1976 session of the general assembly."

Public pressure for further consolidation was expressed in articles and editorials focusing on delay and congestion and advocating a "modernization" of judicial administration. These writings paid little attention to increasing fiscal allocations. They emphasized, rather, the maximization of available resources; neither judgeships nor the judicial department share of the state budget was recommended for major increases.

For legislative leaders, the arguments offered by court unification advocates were convincing. The most frequently cited benefit was the flexibility that would result in the use of facilities, staff, and judicial assignments. Also, several leaders believed that Connecticut had an opportunity to be a "leader" in the forefront of modern judicial administration. Some legislators suggested, however, that the unification was merely an alternative to a direct pay increase, since the common pleas judiciary would receive automatically the superior court judges' salary. The response to their concern was to include in the proposed legislation a six-year pay differential until parity was achieved with the existing superior court judges' salary.

Opponents suggested that the two major drawbacks that would result from unification of the court of common pleas and superior court would be that judges would not be assigned properly, and the degree of attention given to "major" or "specialized" cases would suffer. Concern was expressed that an experienced superior court judge would be assigned to small claims matters, or a newly appointed common pleas judge would be hearing complex civil or criminal cases.

Similar concerns arose from supporters of the existing juvenile court structure. That court, composed of six judges assigned to juvenile cases for their full four-year term, held sessions in three juvenile districts. The supervision of personnel and proposals for rule or statute changes had been the responsibility of the juvenile court judges. It was suggested that the expertise of the juvenile judges would be lost if others were assigned to hear juvenile cases. Many persons expressed similar misgivings about merging a socially oriented court with the adult trial courts. These arguments for a special status for the juvenile court were supported by numerous juvenile and youth service organizations.

The legislative struggle was intense. Strong lobbying occurred on all sides. The proposal merging common pleas and juvenile courts into a single-tier superior court finally passed. The margin was one vote. The probate court remained unaffected. Following a series of meetings with top legislative, bar association, and judicial officers, the governor signed the legislation.

Development of the Administrative Function

Improvements in the administrative capacities of the courts paralleled the changes in structure. The centralization of functions many years prior to structural change was an extremely important factor affecting the ultimate success of unification. It provided the mechanism to effect the structural changes. It also enabled the organization to adapt to or absorb subsequent changes. Such functions as personnel, finance and budget, records keeping, facilities control, purchasing, jury management, data processing, judicial education, rule making, and planning permitted the courts to focus on general structural change and, following enabling legislation, to accomplish the transition to a new, stable system.

For many years, Connecticut responded to the need for improved administration of its court system. In 1937, the position of executive secretary was created by statute to act as auditor of the bills of costs and expenses, to keep information on file as to expenses, and "to perform such other duties of nonjudicial character in administration as directed by the superior court."

Connecticut's executive secretary was perhaps the first in the country. Since the position was created, the duties and functions of the office expanded. In 1941, the executive secretary received greater administrative jurisdiction when he was given additional responsibility for

the municipal courts and trial justice courts, neither of which had been statewide courts.

In 1965, an office for the administration of the nonjudicial business of the judicial department was created to operate through the executive secretary under the supervision of the chief court administrator. The chief court administrator, operating through this office, presently supervises the executive secretary and other staff persons in performing a number of duties, including fiscal management and budget preparation; secretariat services to various judicial bodies; statistical data collection, including data processing; research and planning for the courts; education; and personnel management.

These statutory duties exemplify the extent of internal, centralized administrative control exercised over the offices and courts of the judicial department.

The budgetary responsibility of the executive secretary is perhaps the most important administrative tool for consolidation and control over diverse court systems. In Connecticut, budgets were prepared originally by each court at each location, even for the statewide courts. The fiscal responsibilities of the executive secretary were established at the time the office was created in 1937. In a sense, a centralized, statewide budget has been prepared for the state-maintained courts since that time. The local town, city, and justice courts were financed locally. After 1961, the state was funding all courts in the statewide system of courts created when the circuit court was established in that year.

Responsibility for preparing court budgets was accompanied by responsibilities for other related fiscal matters, including inventory control, payroll preparation and reporting, standardized procedures and controls for payroll and purchasing, and an internal auditing capability. These functions assisted later in implementing subsequent structural changes.

In 1953, the chief justice was designated as the administrative head of the judicial department, directing the executive secretary and chief judges of the various courts. The position of chief court administrator was created 12 years later. Appointed by the chief justice from among the justices of the supreme court, the chief court administrator became the administrative director of the judicial department. The statutory powers granted to the chief court administrator were broad, with overall responsibility for the efficient operation of the judicial department and its constituent courts, the expeditious dispatch of litigation, and the proper conduct of the courts. Other powers included issuing orders and regulations necessary for the efficient operation of the courts, assigning judges, and appointing chief judges for the various courts.

Unlike the court administrators of many states, the Connecticut chief court administrator has supervisory powers over both administrative

personnel and judges. And as a sitting justice of the supreme court, the chief court administrator has administrative powers practically unequalled elsewhere. The result has often been an immediate implementation of policy, once established, throughout all levels of the courts. It is probable that this feature of the Connecticut system is the main reason that the 1974 and 1978 court consolidations were implemented successfully and promptly. The judge/state court administrator is now recognized by the ABA's new Model Judicial Article adopted in 1978.

Since 1965, the chief court administrator has vigorously developed programs and policies that have expanded the administrative capacities of the judicial department. Justice John P. Cotter, the first appointee, held office from 1965 until his elevation to chief justice in 1978. His long term provided continuity and ensured that projects were pursued to successful conclusion. For example, the first comprehensive, long-term building program to improve court facilities was undertaken. Annual reports on facility needs were provided to the governor and legislature. Years later, immediate access to the exact capacities of different court facilities would permit comprehensive planning by court administrators who were implementing unification.

Another major function that was expanded and improved was data processing. This operation, after considerable planning initiated in 1966, computerized civil calendars in the court of common pleas and superior court. Few models or systems existed at this time on the national level. A juvenile case-reporting system was developed several years later. An important by-product of data processing was the ability to obtain statistical information for use in planning implementation of court changes.

Two other administrative developments were the creation of separate offices for jury administration and judicial planning. The former became a central computerized notification process for potential jurors. The existence of a planning and research unit provided personnel to assist in the planning necessary for effective administration. The unit also completed several analytical studies to support some of the decisions made in the implementation stage of court change.

Another development was the centralization of the personnel function. It originated in 1968 with the requirement that attendance, sick day, and vacation records be maintained in the court administrator's office. In the years preceding unification, the personnel function expanded until it included almost all personnel matters for all employees. Also, department-wide directives for the state court system were issued by the supreme court and the chief court administrator, and a judicial compensation plan also was issued to create a degree of uniformity in salaries.

The exercise of rule-making powers by the judicial branch, although not directly an administrative function, permitted the court system later to make many necessary changes in court procedure. Before final unification, the rules for the court of common pleas had been approved by the supreme court, whereas the rules for the superior court were approved by the rules committee of that court. The rules committee had operated for many years. When the need arose to implement court unification, the efficient and experienced committee was able to assist. For example, it reviewed more than 1,200 rules to ensure coordination between existing rules and the statutory requirements of the unification act. New rules and revisions were drafted to give legal authorization to the framework of the unified court and the procedures under which it would operate.

A similar administrative effort was undertaken by a forms management project, which had been functioning within the administrative office for several years. Again, the existence of this established administrative function prior to unification permitted a review of approximately 1,000 forms to ensure that they were compatible with the rules of procedure, statutes, and administrative plans for the unified court.

Other similar administrative functions and offices assisted the smooth implementation of changes in organizational structure. They included continuing education for judges and court personnel, seized-property control, purchasing, statistics, and communications. Preexisting administrative units included offices for juvenile probation, family relations, accounting and payroll, court interpreters, court reporters, and facilities coordination. All were administered centrally by the chief court administrator.

Implementation

Four factors that contributed to successful unification were the lengthy transition period; a strong, centralized administrative office; existing and effective administrative machinery within the implementing organization; and experienced administrative and court support personnel.

The official transition period to implement unification was two years from the date the legislation was passed. This long period permitted the court organization to prepare for and to absorb changes. Most court professionals, however, had been aware of the inevitability of unification for several years before that date and had been considering its potential effect in their planning. As described earlier, the administrative office of the court was operating already in all areas of administration, including personnel, finance, and data processing. It is unlikely that such a major

structural realignment would have succeeded if the organization had been simultaneously required to develop new functional administrative capabilities. Another factor was that direction was provided through an administrative office that possessed direct and immediate control over all administrative matters, whether affecting the judiciary or the court staff. Finally, the persons responsible for the line functions were experienced and had developed formal and informal working relationships with the judiciary, court staff, and court-related agencies.

The unified, single-tier superior court would not commence operation until July 1, 1978, but three statutory provisions, strongly supported by the judicial department, became effective immediately upon passage in June 1976.

The first provision was extremely important. It declared that the judges of the supreme and superior courts had power to adopt such rules of practice as were necessary to effect the transfer of jurisdiction. It also stated that the executive secretary of the judicial department could similarly "do all things necessary within the scope of his authority." Both statutory grants of power permitted planning by those ultimately responsible for effective implementation. It was an indirect acknowledgment that decision making on the many issues that would arise during the transition should not occur in the legislature but, instead, in the administrative offices of the judicial branch.

The second provision was that the bill-drafting office of the legislature was authorized to draft legislation to conform any section of the unification act to any inconsistent legislation that would be passed in the next two years. This enabled the legislature and judicial department to coordinate, on an administrative level, the changes that would be necessary throughout Connecticut's general statutes to ensure proper jurisdiction, venue, and similar matters. Many refinements to the original unification legislation were made in the 1977 and 1978 sessions of the General Assembly. Normally, the judicial department was the impetus for change as it planned for actual operation of the new court system.

The third provision that was immediately effective created an Advisory Council for Unification of the Courts to assist the judicial department and the General Assembly. The 18-member council functioned as an input source for various interest groups that would be affected by implementation decision making. Members included the chief justice, chief court administrator, executive secretary, chief judges of all courts, the chairmen and ranking members of the legislature's judiciary committee, four attorneys (two of whom were appointed by the Connecticut State Bar Association), two persons with business experience, and two members appointed by a court reform organization.

At the first meeting, in January 1977, the chief court administrator

was elected chairman; the following eight subcommittees were established: family and juvenile, appellate, courthouses and venue, administration and management, resources, personnel, rules and procedure, and liaison with the legislature. Additional persons were added to the subcommittees as observers, although they participated fully in all discussions and recommendations. These persons included prosecutors, public defenders, court clerks, administrative personnel, and others recommended for, or requesting, inclusion.

The council functioned throughout the transition period as a true advisory group. With the exception of the subcommittee on rules, no subcommittee independently proposed or drafted legislation or rules. The council did express its position by adopting resolutions or making recommendations to the General Assembly or the Superior Court Rules Committee.

Six months before unification, the Advisory Council, in conjunction with the Judiciary Committee of the General Assembly and the judicial department, sponsored a one-day public symposium on unification. Participants included members of the General Assembly, practicing attorneys, judges, prosecutors, public defenders, and members of public interest organizations. The symposium examined current practices of the courts and their administration. The first half of the program addressed the administration of justice in Connecticut with representatives expressing the views of the judiciary, lawyers, the public, and legislators. The second half was devoted to workshops whose topics are listed in Appendix B. The symposium was considered a success. It brought together a large number of persons to consider the opportunities for change that existed with the court merger. It also demonstrated the court system's efforts to achieve the best results possible.

In addition to statutory provisions effective upon passage to permit long-term planning, the remaining unification legislation passed in 1976 was basically simple in its mandate. All jurisdiction formerly held by the juvenile and common pleas courts would be transferred to the superior court. The unified superior court would thereby become the sole trial court of original jurisdiction for all causes of action. The exception was the probate court, whose matters would continue to be handled through local probate offices.

Further guidance for implementation was provided by Connecticut General Statute §51-164, which defined jurisdiction, administrative organization, and the manner in which judges would be assigned:

> The Superior Court shall consist of such divisions and parts thereof as shall be provided by the rules of the Superior Court to provide the highest standards of justice and the most efficient operation of said court. The chief court administrator shall assign to each such division and part thereof such number of judges as he deems advisable and shall designate the holding of sessions of such divisions and parts at such times and localities as he deems to be in the best interest of court business, taking into consideration the convenience of the litigants and their counsel, and the efficient use of courthouse personnel and facilities.

The above statement was more than an acknowledgment of decision-making authority within the judicial branch. It demonstrated the latitude permitted the judicial department to develop specific means for efficient implementation of the unified system. This was consistent with one of the main objectives of unification—greater flexibility in administration.

Most importantly, the above statutory framework for operation of the new court reflected the interrelationship among the five major issues of facilities, personnel, jurisdiction, judicial assignments, and administration. Each of these issues will be discussed in detail to explain actual implementation decisions.

Facilities

One of the most difficult problems for the administration of the judicial department was use of facilities in the newly unified court system. Inadequate, poorly designed, or generally ill-situated facilities had plagued the Connecticut courts for many years. Fifty-five separate facilities were distributed over the relatively small 5,000-square-mile state. Many older facilities were located geographically on the basis of past political pressures rather than on a determination of the most suitable location. Many could not accommodate the business of the merged court because of lack of space or of access to necessary support services such as transportation for prisoners, family and probation officers, or data processing terminals. For the court administrator contemplating change, the available facilities were an unyielding constant. Even jurisdiction and venue decisions were affected. In many instances, including jurisdiction and venue, the availability or unavailability of adequate facilities would determine policy.

Before the 1976 consolidation of the circuit and common pleas courts, three groups of facilities existed in the state. The superior court held sessions in the state's eight counties; the court of common pleas conducted business at the same superior court facilities; the circuit court operated at 50 other locations in 18 circuits.

Following consolidation in 1975, common pleas facilities were divided popularly into two groups. The former circuits became "geographical areas," and their courthouses became known as "G.A." courthouses. The old common pleas facilities became known as the "county common pleas" courthouses, since they had been allied with the county superior courts.

By the time of unification, the county-located common pleas offices were being administered in a fashion similar to that of the superior court offices that adjoined them. Most of the major legal actions were made returnable intentionally to such offices, for two important and farsighted reasons: first, they would be closer to the large superior court jury panels, and second, they could be added to the computerized civil case information system that was operating in the superior court locations. The local G.A. facilities operated differently, handling only small claims, traffic, and less serious criminal charges.

Unification legislation established 12 judicial districts in Connecticut. With the exception of two newly created districts, all had the same boundary lines as the preunification counties.

The initial need was to develop a precise understanding of the capabilities of every facility in the state. This was accomplished by two projects. First, a study was initiated for the advisory council to inventory existing facilities in use by the superior, common pleas, and juvenile courts.

A second project that was undertaken immediately was the formation of an ad hoc committee within the judicial department administrative office to inspect personally all superior court facilities. The objective of this study group was to determine the ability of each facility to accommodate a unified clerk's office. In general, this would apply to the superior court clerk's office and the county-located common pleas office in each new judicial district. These offices had been functioning in close proximity since the consolidation several years earlier. Many persons developing implementation plans believed that the physical merger of the clerk's offices was vital to any successful unification effort. As the common site of all court business, the clerk's office required complete integration. It was important that operations and staff be merged in fact, not simply in name. Several persons, who had been urging court reform, added their concern that failure to merge all operations completely was a sign of resistance to unification. Such a proposal, however, seemed to exhibit a lack of understanding of existing constraints, the most serious being the lack of adequate facilities.

A secondary objective of the personal review of superior and common pleas court facilities was to ensure that all floor plans were accurate representations, so that decisions could be based on firsthand knowledge.

The review of facilities included a special analysis of three administrative functions performed at each location: intake, maintenance of files, and data processing. The objective was to provide a common area for the performance of each function. Most larger court facilities at major locations permitted merging these three functions with their

counterpart in the other court. The merger of these functions of the clerk's office was accomplished through minor physical changes.

The few offices lacking adequate space to handle the combined judicial district workload were able to improve their facilities by changing record-retention policies. A major problem in many facilities was the excessive retention of old files, exhibits, reporters' notes, and other records. Dead files frequently had been maintained for more than 50 years. By reviewing the rules of practice for record destruction and strictly interpreting their provisions, court personnel purged many files or shipped them to central storage. The result was the creation of additional space for new offices or the storage of the more recent files of the newly combined clerks' offices.

Jurisdiction and Venue

The issues of jurisdiction and venue in the new single-tier trial court were important for many persons involved in the court's daily business. Affected persons included practicing attorneys, legislators, judges, and public citizens. For attorneys, the court location for filing papers or holding trials would determine the extent of time that would be lost through travel. Judges would be affected similarly in their assignments by the amount of travel required and the quality of facility and court services available at a particular location. Also, there was a desire to maintain a degree of localism in the court system in order to make courts accessible to litigants and jurors.

Decisions concerning jurisdiction and venue also would determine how limited resources would be allocated. Miscalculations of the ability of a staff and facility to handle assigned business would detract from the potential success of unification.

Flexibility to determine jurisdiction and venue was provided to the judicial department and chief court administrator. Three provisions permitted an almost unilateral determination of case assignment. The first provision was that, whatever the cause of action, all judges in the unified superior court would possess the same jurisdiction; each superior court judge would have the power to hear and decide any subject matter as long as the case was brought properly before the court. Jurisdiction would not have to be defined by the extent of power granted to a judge to hear a matter. Second, there was flexibility in the type of subject matter that could be heard at a location. Unification statutes stated that "for the prompt and proper administration of judicial business, any matter and any trial can be heard in any courthouse within a judicial district" as long as it was convenient to litigants and counsel and was a practical use of personnel and facilities. The third provision was that the chief court administrator was given the power to designate the holding of sessions at

times and localities that he deemed to be in the best interest of court business.

Unification legislation did provide that the superior court would consist of divisions and parts as determined by rules of court. The use of divisions and parts for purposes of administration and practical differentiation among types of cases was in accordance with the ABA Standards on Court Organization, Section 1.10, which recommended such simple divisions and departments as are needed within a general jurisdiction trial court.

The rules of practice that were finally approved by judges did create three divisions: family, civil, and criminal. Parts were established within these divisions to group cases that should be handled similarly.

The division and parts that were created are operating at present. A brief discussion of the issues involved in defining their jurisdiction is useful.

Family Division. The family division included the entire operation of the former juvenile court and the family relations section of the superior court in a four-part structure:

Part A—Juvenile matters, including neglect, dependency, delinquency, and termination of parental rights;
Part B—Support and paternity actions;
Part C—Actions brought pursuant to the Uniform Reciprocal Support Act; and
Part D—Dissolution of marriage and all other family matters.

Juvenile court was unique. It had been conducted in three districts; each district was distinct from any jurisdictional lines existing in other trial courts. Therefore, the initial need was for appropriate jurisdiction and venue lines to bring former venue boundaries into conformance with those of the new judicial districts. This permitted juvenile operations to be administered through a judicial district.

The trial location for family division matters was similar to that existing before unification. Juvenile matters were separated physically from other superior court business. Once the unified court began operating, other matters would be heard at a juvenile facility as long as it was not scheduled simultaneously with a juvenile proceeding; this policy ensured confidentiality of juvenile matters.

Criminal Division. Although each superior court judge in the unified court would have jurisdiction to hear and sentence for any crime, the practical question concerned the number of cases that could be heard at each location. Jurisdiction and venue rules could not overburden any facility or its staff. At several of the local G.A. facilities of the court of common pleas, prisoner security and transportation were lacking; other

G.A. locations could not accommodate the large jury panel that would be required for the trial of major crimes. The most experienced public defenders, prosecutors or state's attorneys, and their investigative staffs, were not located at the G.A. courts. In addition, no space was available to shift staff to the G.A. facility. Under these circumstances, it was necessary to continue to transfer major cases to the judicial district facility.

The issue of transfer presented difficulties. Disagreement existed concerning two items: first, the type of crimes to be transferred and, second, at what point in the proceedings a case should be transferred. A subcommittee of the advisory council, consisting of judges, prosecutors, public defenders, and private attorneys, approved a recommendation that permitted maximum flexibility for each judicial district in the number of cases that would be transferred. It provided that the place of arraignment for all criminal matters would be the more localized G.A. locations. The place of trial would be as follows: Class A, B, and certain Class C felonies would be tried at the judicial district courthouse; misdemeanors, Class D, and certain Class C felonies would be tried at the G.A. facility. The flexibility would be derived from a decision in each judicial district as to which Class C felonies would be transferred. This decision would be a policy determination by the chief administrative judge in the judicial district following consultation with the state's attorney and consideration of the most effective use of limited personnel, relative caseloads, and such other factors as would promote uniformity of treatment and the orderly administration of criminal justice.

The subcommittee's recommendation concerning the time of transfer from a G.A. to a judicial district courthouse was that it occur immediately following arraignment and prior to plea. Several members of the defense bar, who felt that "poor" cases would be transferred with inadequate or late review of their legal sufficiency, objected. One response offered to this possibility was that it was unlikely that the judicial district prosecutors would not permit such cases to be transferred continually to their office, thereby ensuring that some screening procedure would be instituted.

The problem with the proposal concerning which cases to transfer was that different standards would be in existence in different judicial districts. Each district would have a different policy for treatment of Class C felonies. The possibility of increased disparity in handling criminal cases led to rejection of the recommendation.

Ultimately, by rule of court, the superior court judges established a two-part criminal division:

Part A—Major crimes (Class A, B, and C felonies, and felonies punishable by 10 or more years); and
Part B—All other crimes, motor vehicle violations, and infractions.

All arraignments would be held at the G.A. location, and following plea, major crimes would be transferred to the judicial district facility. The levels of crimes that would be handled at each facility, therefore, were basically similar to those levels existing prior to unification. Again, a major determinant was the limitation imposed by existing facilities.

Civil Division. As with criminal matters, any civil action could be heard in any court facility subject to venue rules. The rules that were finally approved by the superior court judges provided that the civil division would consist of the following five parts:

Part A—Landlord and tenant and summary process;
Part B—Small claims;
Part C—Administrative appeals;
Part D—Civil jury; and
Part E—Civil nonjury.

The basic venue for all civil actions was the judicial district, except for those actions returnable specifically to G.A. locations. This latter group included small claims, housing matters, summary process, landlord-tenant, and such other matters as determined by court rule. The result was that Parts A and B of the new civil division continued to operate from the G.A. courthouses in the same manner as before the merger. Part C cases have been assigned recently to all judges, regardless of their assignment.

All other civil cases must be brought in the judicial district location. The main benefit is greater accessiblity to large jury panels and to data processing operations supporting the computerized civil calendar. This procedure results in more effective and uniform control of civil matters filed in the state.

As the court system moved toward a unified structure, a separate court for housing matters was proposed. Dissatisfication with the current processing of landlord-tenant disputes led to proposed legislation that would establish a separate housing court. Some persons recognized the irony inherent in achieving a unified court system while simultaneously creating a separate specialized court, and the legislation was diverted. A specialized part of the superior court was created, however, to handle housing matters in one major city on a trial basis. Although working with a citizen advisory board, the housing court has functioned within the mainstream of the state court system and not as an independent court.

Appeals. Before unification, an appellate session of the superior court had been held for many years. Under unification legislation, the appellate session was continued as a panel of three superior court judges to hear appeals for several days each month.

One major change was to develop rules for certification of certain appeals to the supreme court. Administrative appeals that were decided by the superior court were no longer appealable to the supreme court as a matter of right. Rather, they would be reviewed only upon certification by two justices. Another change, generally not welcomed, was that appeals from juvenile matters, formerly taken from juvenile court to the superior court, would be taken directly to the supreme court.

The judicial department is advocating replacing the appellate session with a constitutional intermediate appellate court; this conforms with the Model Judicial Article adopted by the American Bar Association in 1978. It is improbable that Connecticut's size will lead to the geographical divisions described by the model article.

Judicial Assignments

Unification legislation provided that the chief court administrator would assign judges to the divisions and parts of the superior court. This power of assignment had been exercised by the chief court administrator for many years.

For the judges, as discussed earlier, one of the unknowns during the implementation period was the effect the merger would have on the types of cases they heard. Before July 1978, the superior court judges had been appointed from among the common pleas judges. A major factor in the appointment was seniority or experience as a common pleas judge. The result was that the superior court judge was more experienced than the judges of other courts. Once appointed, however, the new superior court judge adapted quickly to the needs for handling the "major" cases, including complex murder trials and multiple-party civil litigation involving large monetary amounts. An often-repeated question was whether the superior court judge would be assigned to small claims, or would the common pleas judge be assigned to complex civil and criminal cases?

The concern that judges would be assigned inappropriately was not justified in reality. At least four factors contributed to this result.

First, the chief court administrator, as a justice of the supreme court, had many years of experience as a trial judge. He had contacts with the judiciary on a daily basis. On account of this personal identification with the trial judges, the chief court administrator would be able to recognize and to deal with any potential problems.

Secondly, the chief court administrator and other officials had received a mandate to effectively unify the trial court; the court leadership had a personal stake in the ultimate degree of unification achieved. In a sense, failure to achieve unification of the judiciary would hinder seriously the success of unification of the courts.

Thirdly, the chief court administrator was interested in using the best

person for each job. This principle nullified any consideration of extreme or unreasonable assignments.

The final factor was the existence of an understanding by the individual judge that he or she possibly was not the best choice, at least at that time, for certain types of cases. Because of background, experience, or personal interests, there was a recognition that certain judges were not able to hear every type of case beginning July 1, 1978.

Between 1976 and 1978, when unification would be effective, a debate ensued concerning which judges would be assigned to hear juvenile matters. Before unification, judges had been appointed to the juvenile court for their entire term of office. The practical effect was a life assignment to juvenile matters; there was no rotation into other areas of court. An expertise had been built by the juvenile court judges, while the rest of the judiciary had no judicial experience in juvenile law.

The practice of assigning judges outside their area of special knowledge raised concerns among the social service agencies, who were used to dealing directly, and often quite informally, with one or two judges. The juvenile court staff also was accustomed to procedures instituted by the judges of one of the former juvenile court districts.

Among the six juvenile judges, it became known that three or four were very willing to be assigned to nonjuvenile matters, while the others wished to hear only juvenile cases.

An additional factor existing at this time in Connecticut was a growing concern by the public, as expressed by newspaper editorials and many legislators, that serious juvenile offenders were not being handled properly by the existing juvenile court, and that changes in court procedures and dispositions were warranted. Many adult trial court judges believed that juvenile law could be learned as any other new area of law. They also felt that the sensitivity required by a juvenile judge was similar to that expected of the judge hearing family relations matters. There was some mutual agreement that the placement of new judges from the adult trial court into the juvenile area, and vice versa, would provide fresh views and input.

Since the basic factors for assignment were the knowledge and ability of a particular judge, special emphasis was placed on judicial education efforts. Between 1976 and 1978, education programs and materials were designed to increase the competence of judges in two main areas: family relations and juvenile law. In addition to the extensive judicial education operation that had existed in Connecticut since 1973, special seminars were held and written materials distributed to orient the common pleas judges to family matters. Also, once the initial assignments to juvenile matters were announced, an orientation was held at the juvenile facility where the new judge would be sitting. In addition to familiarizing the judge with the new environment, the orientation sessions reduced some

concerns of the juvenile court staff, which was responsible suddenly to a new person. The orientation included sessions with probation officers, detention supervisors, prosecutors, public defenders, court clerks, and representatives of the state agency responsible for child abuse and neglect proceedings. The juvenile court judges also conducted a program on substantive juvenile law for those who were newly assigned.

The initial judicial assignments to divisions and parts of the single-tier superior court made several changes. First, assignments were made for a six-month period, rather than the prior three-month term. Merger legislation had eliminated a requirement that assignments be announced for a full year, although judges had been rotated extensively during that year. It had been traditional that Connecticut's judges ride circuit. Also eliminated were the statutory terms and sessions of court that existed in civil and family relations matters.

Frequent judicial rotations reduced the judge's ability to manage his caseload continuously. This was the deciding factor in lengthening the assignment period to six months. With the short three- or four-month period, it had not been possible for the judge to set even short-term objectives in caseflow management. It was the general consensus of the judiciary that the longer assignment period would increase the disposition of court business.

The second change in assignment practice was to assign judges not only to one of the 11 judicial districts but also to specific divisions and parts within the district. Later, in several of the smaller districts, assignments would be made only to the district, and further assignment would be made by the district's administrative judge.

The solution decided upon for assignment to juvenile matters was to minimize the effect of any change. In judicial districts with a juvenile facility, one judge was designated for juvenile matters. The district that had a former juvenile court judge assigned to it used that judge for juvenile cases. The six judges from the former court were distributed among different districts. Several districts with less than a full-time juvenile operation were able to share one of the experienced judges. Only in a few districts were judges who were inexperienced with juvenile matters assigned following the merger. All participated in judicial education programs. The intentional result, therefore, was a minimization of disruption to the operations of the former juvenile court.

Personnel

The offices of both the superior and county-located common pleas courts consisted of a chief clerk, assistant clerks, and clerical staff. The knowledge that personnel would be combined in joint functions caused uneasiness, as the effect of the merger on duties and status was con-

templated. Although not stated, the informally promulgated "understanding" was that the chief clerk of the superior court would be the chief clerk of the new judicial district and that the chief clerk of the common pleas court would be the assistant chief clerk of the district.

In considering staff realignment the objective of decision making again was to maintain the status quo. Although greater staff reorganization could have been accomplished for the sake of some efficiencies in the unified court, it was believed that personnel disruptions would generate unnecessary problems and jeopardize ultimate implementation. Additionally, any anticipated "efficiencies" were prospective estimates that possibly would not be achieved in actual practice.

Therefore, a simple merger of operations and staff was accomplished in all judicial districts, and few personnel changes were made. Court reporters who had worked in the superior court would continue to serve in the same courtrooms for the same types of cases. Family relations officers would continue to operate from the same superior court facility, and juvenile probation officers would work only with juveniles. A contrary possibility had been raised by several legislators and members of the advisory council, who proposed a new "family services" operation. On the basis of the principle enunciated earlier, however, each staff member continued with his original director as a separate unit within a family division.

The state's attorneys and prosecutors who operated within the judicial branch of government in Connecticut would remain in the same facility as before unification. Job titles for all prosecutorial personnel were standardized, however. Public defenders in Connecticut were governed by a Public Defender Services Commission. The unification had minimal effect on their operation, other than to cause some reallocation of personnel and offices.

Administration

The remaining subject in our examination of major areas of implementation policy making is administration. It includes two phases that are difficult to separate—administrative actions taken during the transition period solely to implement the merger, and subsequent developments in the administrative organization that would assist in managing the unified result.

As discussed earlier, the basic administrative capacity of the Connecticut judicial department was developed well before the enactment of legislation that formally unified the trial courts. Therefore, during the two-year transition period, the main tasks of chief administrative officials were to coordinate and improve existing functions and to undertake specialized planning.

The administrative office of the courts had great flexibility in charting its course for successful implementation. Various subcommittees of the advisory council were involved in the preliminary discussions, but the broad knowledge of the existing system and the expertise required to reach reasonable conclusions directed the present administrative officials to make most final, specific decisions.

The major structural reorganization in Connecticut was achieved with limited studies and reports. Neither time schedules nor finances permitted extensive research into all available options in a given matter. When an understanding of the exact effect of an administrative decision was vital, or in cases where empirical evidence was sought, special studies were undertaken. One example was the development of a projection of the effect certain jurisdictional changes would have on caseloads. Two new judicial districts had been created from existing districts. At the same time, several towns were transferred from one district to another. The projection, taking into consideration numerous, weighted variables, permitted supportable conclusions on the effect of changes on caseload.

One problem in unifying the courts was to reprogram computer operations to ensure that schedules and trial calendars were accurate and useful to presiding judges and others responsible for caseflow management. Before unification, two separate trial lists were printed, one for the computerized civil side of the court of common pleas and the other for the superior court. An important question was how to integrate the trial lists. For counsel and litigants in some cases, it could mean that instead of imminent trial in common pleas, they would be placed far down the list following integration. Since some dockets in common pleas tended to be more current, it was possible that cases filed after the date of many superior court cases would fall from the top of one trial list to a lower position, requiring an additional wait for trial. In some cases the reverse would occur.

Integration of lists could be achieved through several choices, such as listing all cases by date filed, date pleadings were closed, or date claimed for trial. Those persons advocating listing by date filed viewed the court as having responsibility for a case as soon as it entered the system and also thought that all cases deserved equal treatment. Other persons felt that the court's responsibility was paramount only when the pleadings were closed or a case claimed for trial. Following sample runs for all court locations, the trial lists were merged, but their origin also appeared; clerks were authorized to adjust lists in any case where the result was unfair or clearly unreasonable.

In each judicial district one judge was named the administrative judge for that district. His responsibilities included serving as liaison between the chief court administrator and the trial judges, making reassignments when judges concluded their primary assignments of the day, selecting

facilities for trials, apportioning administrative appeals equally among all judges, and generally administering the court operations in the district for the chief court administrator.

The position of presiding judge also was created in each facility for each separate division and part. The presiding judge's responsibility was to expedite fairly the disposition of court business. The position reflected the special emphasis that would be placed on increasing the flow of business after unification was effective.

Post-Unification

Since a year and a half have passed since Connecticut's courts were unified structurally, a few subsequent developments should be noted.

First, as mentioned earlier, the chief court administrator has launched an intense campaign to remedy some of the problems that have existed for many years. In a public speech two weeks before unification, Justice John A. Speziale announced that he planned "to come to grips with the common complaints of cost, complexity, and delay that have in recent years bedevilled the judicial system and tarnished our image." Subsequently, special court delay projects have been implemented. A coordinator of all clerks in the state was named. Statistical reporting procedures were improved. Caseflow coordination also was increased with the creation of three new positions of caseflow manager for the civil, criminal, and family divisions. And, a chief administrative judge was appointed for each division to work with the caseflow manager to expedite dispositions and to deal with problems arising within the division.

Judges have been rotated freely to new areas of practice. Following the initial assignments to juvenile matters, additional judges have been introduced slowly to that system. Educational programs and periodic substitutions have built a pool of judges with familiarity in juvenile law. It is estimated that at least 35 percent of the judiciary are immediately able to hear juvenile matters.

Further benefits resulted throughout the system from the increased flexibility available for management of the court system. A fuller discussion of specific results that have occurred subsequent to unification awaits the passage of time and a more detailed analysis than is within the scope of this review of structural change.

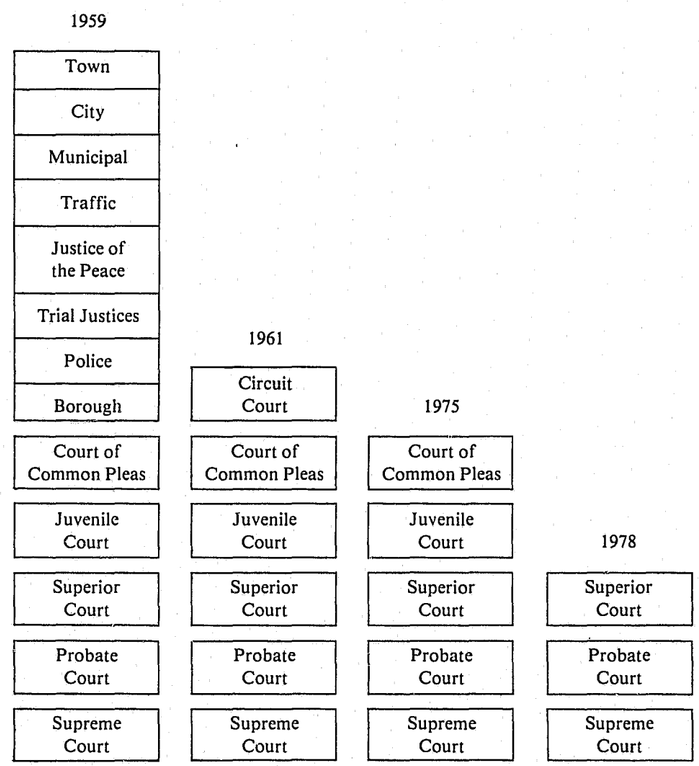
Conclusion

The result of structural changes in Connecticut's courts in 1961, 1975, and 1978 was the creation of a single-tier, general jurisdiction trial court. For many years a deliberate policy of incrementalism had guided the

court system. It was this policy that caused change through measured growth and permitted the consolidation or replacement of firmly established institutions. And, once committed to a change in structure, the same policy aided smooth transitions through the existence of experienced administrators and established administrative units that were functioning prior to implementation of the change. The result ensued that the organization would adapt itself as needed for its continued viability.

APPENDIX A

Major Structural Changes to the Connecticut Court System



APPENDIX B

Symposium Workshop Topics Suggested for Discussion

I. **Divisions**
What divisions should the unified court consist of—e.g., juvenile, family, criminal, housing, civil, jury, administrative appeals, appellate, small claims? Should judges be assigned by division?

II. **Case Flow Management**
Should each division or each court independently assign its own cases (multiple, noncoordinated assignment lists) or should assignment of cases be by a single coordinated assignment list so that no attorney has an unrealistic number of cases on the list at any one time, i.e., can the computer do a better job?

III. **Rotation of Judges**
Should judges sit in one county for a term and then rotate on to another county or should a judge sit in one location permanently or for an extended period of years so that the judge handles a case from beginning to end?

IV. **Court Administration**
Should court sessions be from 9:00 a.m.–5:00 p.m., five days per week? Should judges be provided with lawyer-clerks and better working facilities and equipment?

V. **Revisions of Rules and Statutes**
What statutes and rules concerning the unified court would you want enacted?

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WISCONSIN

JUDICIAL REFORM IN WISCONSIN: SOME MORE LESSONS FOR REFORMERS

Robert J. Martineau

The year 1978 saw in Wisconsin the culmination of a judicial reform movement begun a decade earlier. During that year, a revision of the judicial article of the state constitution became effective, statutes and court rules implementing the constitutional amendment were adopted, and the first tentative steps toward judicial merit selection were taken. This article traces the history of the reforms, identifies the principal actors in the drama, and analyzes the reasons for success.

The Judicial Council's Attempts at Reform

During the 1950's and the early 1960's, the principal proponent of judicial reform was the Wisconsin Judicial Council, a statutory agency with members representing the courts, the legislature, the executive branch, and the organized bar. This agency can propose either legislation or court rules in both substantive and procedural areas. During the period under discussion the executive secretary of the council was a Madison attorney who later became president of the Wisconsin State Bar Association and who was one of the principal proponents of judicial reform in Wisconsin.

In 1962, as a result of proposals made by the judicial council, the justices of the peace were effectively abolished (municipal justices were retained); and county courts, which had been staffed by part-time judges and which had jurisdictions that varied from county to county, were converted into courts of uniform statewide jurisdiction with full-time judges. The jurisdiction of county courts was made almost identical to that of the circuit courts.

During the balance of the 1960's, various minor reforms were

Robert J. Martineau was Executive Officer of the Wisconsin Supreme Court from 1974 to 1978. He is now Associate Dean and Professor of Law at the University of Cincinnati, College of Law. He received a BS degree from the College of the Holy Cross, Worcester, Massachusetts, and a JD degree from the University of Chicago Law School.

adopted, including the establishment of an annual judicial conference of all Wisconsin judges, the elimination of references to justices of the peace in the constitution, the adoption of a new code of judicial ethics (with a judicial commission to investigate complaints against judges), and the creation of a judicial education program. Judicial reform continued to be a subject of concern for the Legislative Council, the judicial council, the state bar, the League of Women Voters, and several other groups. As the end of the decade approached, these facts became apparent: there was little justification for maintaining two separate trial courts with almost the same jurisdiction; some ways were needed to relieve the caseload pressure on the supreme court (the state's only appellate court); and improved court administration and some form of judicial merit selection were necessary.

The individual most significant in achieving the consensus that major judicial reform was necessary was Chief Justice E. Harold Hallows. Soon after he became chief justice in 1969, he began speaking out on various judicial reform topics and sought LEAA funds to help the supreme court increase the number of cases it could decide and to enlarge the state court administrator's office. The major breakthrough came in January 1971, when Chief Justice Hallows gave a State of the Judiciary address to the annual judicial conference. In that speech, he called for the appointment of a blue ribbon committee of citizens, independent of the three branches of government, to study the needs of the judicial system and to make recommendations as to the steps necessary to meet those needs. At about the same time, the Judiciary Committee of the Legislative Council appointed an advisory committee on court reorganization to consider constitutional and statutory improvements in the court system.

A Citizens' Committee Joins In

In April 1971, Governor Patrick J. Lucey, responding to Chief Justice Hallows's proposal, issued an executive order creating a Citizens' Study Committee on Judicial Organization to make recommendations concerning the judicial system of Wisconsin. He appointed a committee of 40 persons, a majority of whom were nonlawyers and none of whom were judges, legislators, or executive branch officials. The chairman of the committee was a Milwaukee banker with a law degree, and its staff was headed by a Madison attorney selected by the committee. Funding for the committee was received from the Wisconsin Council on Criminal Justice, which also provided quarters for the committee staff. In addition to the staff director, one other salaried full-time attorney and eight unpaid "advisors," mostly young lawyers in private practice or government, assisted the committee at the request of the director.

The Citizens' Study Committee divided into five subcommittees. It

held a total of nine full-day public hearings throughout the state. More than 125 persons testified, including many experts from outside Wisconsin. Surveys also were taken of the opinions of state bar members and of judges. Reports of the subcommittees were submitted to the full committee in October and November 1972. The committee met for three days in November and December 1972, during which time the proposals of the subcommittees were considered and either adopted, rejected, or revised.

The committee filed its 253-page (plus appendices) report with the governor in January 1973. The major sections of the report dealt with court structure and jurisdiction, court administration and support, judges, court availability, and substantive and procedural law. (Only the first three parts relate to topics generally considered within the area of judicial reform.) This report played a central role in the judicial reform movement in Wisconsin. In fact, it served as the model for most of the specific proposals made subsequently, and it became the frame of reference for consideration of such proposals.

The committee's principal recommendations included the following: creation of a single-level trial court; limitation of municipal courts to jurisdiction over municipal ordinance violations; creation of an intermediate appellate court, with jurisdiction over all appeals; vesting of administrative authority over the entire court system in the supreme court and chief justice; division of the trial courts into districts with a chief judge and an administrator in each district; state financing of all courts except the municipal court; judicial appointments by the governor subject to approval of a judicial qualifications commission; election of judges in noncompetitive elections; and vesting in the supreme court authority to discipline or remove a judge for misconduct or incapacity.

The report was well received by the governor and the judiciary. The 1973 judicial conference endorsed the principal recommendations of the report almost unanimously.* The committee arranged for many of its recommendations to be put into the form of a constitutional amendment, which was introduced in the legislature in the spring of 1973. The Legislative Council advisory committee also developed its own constitutional amendment at about the same time.

1973—A Citizens' Conference

Both amendments were the subject of a legislative hearing in May 1973, but no action was taken on them. In July 1973, a citizens' con-

* The near unanimity of this endorsement may be misleading. To some degree, it was a result of the governor's statement that he would not support any increase in judicial salaries until judicial reform had been achieved.

ference on the judicial system was held. The planners for the conference were strong proponents of judicial reform. A wide variety of individuals with other viewpoints represented the fields of labor, business, white-collar professions, women, the bar, agriculture, the news media, education, and religion. The conference was organized by the American Judicature Society, with funding from the Wisconsin Council on Criminal Justice. The main topics considered were court structure and organization, judicial selection and discipline, and court administration. The principal focus was on the two draft constitutional amendments of the Citizens' Study Committee and the Legislative Council advisory committee. At the conclusion of the conference, a resolution was adopted to create a permanent citizens' committee to educate the public about the judicial system. The position on reform taken by the conference basically followed the recommendations of the Citizens' Study Committee report, except that no consensus on judicial merit selection could be reached. The Citizens' Court Association, Inc., was formed as a result but was never very active.

Before the 1974 session of the legislature, the proponents of both draft amendments agreed on a compromise amendment. Even though many concessions were made to gain the support of legislators thought to be opposed to any judicial reform measure, the compromise amendment did not advance beyond the committee hearing stage in the 1974 session of the legislature. One of the reasons no action was taken was that the Republican majority leader in the Senate ran against a justice seeking reelection for the supreme court; the legislator arranged for no action to be taken on judicial reform.

The failure of the legislature to respond favorably to the compromise amendment led the supporters of the Citizens' Study Committee proposals to abandon the compromise amendment in the fall of 1974 and return to the original recommendations of the Citizens' Study Committee. The principal participants in this decision were the Speaker of the Assembly, a past president of the Wisconsin League of Women Voters and current president of the citizens' court Association, Inc. (formed after the citizens' conference), Chief Justice Horace Wilkie, a former executive secretary of the judicial council and current president of the state bar, and the executive secretary of the Wisconsin Federation of Cooperatives.

Chief Justice Hallows retired in August 1974. The judicial reform movement continued after his retirement, because his successor, Chief Justice Horace Wilkie, was committed to judicial reform and, like his predecessor, was willing to use his office to achieve that end. Chief Justice Wilkie felt that he had a mandate from the voters to support judicial reform, since his spring 1974 reelection campaign had been based in large part on the Citizens' Study Committee proposals.

A Constitutional Amendment

A newly drafted constitutional amendment was introduced in the legislature on the first day of the 1975 session in January. In February, the judiciary committees of the two legislative houses held a joint hearing on the proposal. This hearing developed substantial support for the amendment, and little vocal opposition was heard. Support was primarily from leaders of organizations with large memberships, such as the state bar, the League of Women Voters, and the Federation of Cooperatives, while the opponents were individuals representing only themselves.

The amendment, as introduced, called for the creation of a new intermediate appellate court, a single-level trial court, state financing of the judicial system, judicial discipline and removal power vested in the supreme court, and administrative authority over the entire judicial system in the supreme court. The amendment did not contain any judicial selection provisions. Proponents of the amendment did not agree about the necessity for change in the judicial selection procedures in Wisconsin, and it was thought that the subject was too controversial to be joined with the other items on which there was unanimity.

The proposed amendment passed the Assembly during the 1975 session without major changes. It was taken up in the Senate, where the chairman of the Senate Judiciary Committee was the principal supporter. The amendment passed the Senate, but only after major changes were incorporated. When the amended amendment was returned to the Assembly, the reform leadership there found the Senate amendments unacceptable. Rather than have the proposal die, a conference committee was appointed to develop a proposal that would be acceptable to both houses. Leading proponents and opponents of judicial reform were placed on the conference committee.

During the spring and summer of 1975, there was little activity on behalf of judicial reform except that of Chief Justice Wilkie. He used every opportunity to speak about the issue, but few appeared interested. He made one series of speeches at which the audiences were embarrassingly small.

The legislative conference committee held hearings during the fall of 1975. The proponents of reform had a narrow majority on the committee. They decided not to force passage of the amendment that had passed the Assembly, but to develop an amendment that would gain wide support in the legislature. One of the major realities that the proponents had to deal with was a very strong anti-judge, anti-lawyer bias in the legislature, even among the small minority of legislators who were lawyers. The legislature was beginning to reassert control over both the executive and judicial branches of government. It was thought necessary,

consequently, to include in the amendment increased legislative influence over the judiciary without sacrificing any significant judicial power.

The Momentum for Reform Grows

The conference committee finally approved the amendment by a split vote and reported to the legislature a constitutional amendment that established a supreme court, a court of appeals, and a circuit court. The legislature was given authority to determine the structure and size of the court of appeals and to divide appellate jurisdiction between the supreme court and the court of appeals. The legislature was also given authority to create additional trial courts as long as these courts had statewide, uniform general jurisdiction. These provisions relating to trial courts would permit the legislature to retain the existing county courts or to merge them into the constitutionally established circuit court. The conference committee compromise also specified the supreme court's administrative control over the court system and authorized the supreme court to discipline or remove judges for cause but gave the legislature responsibility for establishing the procedures under which the supreme court would exercise that power. The last provision resulted from the adverse reaction of some members of the legislature to the Judicial Commission established by the supreme court. Many legislators felt the commission had not been active enough in disciplining errant judges.

During conference committee deliberations, there were frequent consultations on the content of the amendment between the proponents of judicial reform and the members of the committee who agreed on the issues. The principal figure on the committee was the chairman, who was also chairman of the Senate Judiciary Committee, while Chief Justice Wilkie was the spokesman for the reformers. Few meetings between these two individuals took place; instead, negotiations were usually conducted by an attorney on the staff of the committee and the author. The Speaker previously had promised Chief Justice Wilkie that the Assembly would not approve anything that the judicial reformers did not support, and these negotiations were a result of that commitment. The entire process in the committee involved a balancing between what was thought essential to sound judicial reform and what was necessary to obtain legislative approval. The amendment as it was proposed by the conference committee consequently was acceptable to the reformers.

Passage of the Initial Test

The conference committee proposal was presented to the legislative session that began in January 1976. The amendment passed easily in both the Assembly and the Senate because of several factors. First was the content of the amendment. It contained, insofar as the reformers were concerned, the basics necessary for substantial improvement of the

judicial branch. These included the creation of an intermediate appellate court, legislative authority to create a single-level trial court, and the vesting of administrative and disciplinary authority over the entire court system in the supreme court. It also contained a substantial recognition of legislative responsibility for the judicial system, as has been noted previously.

Second, the initial passage of a constitutional amendment is not too significant in Wisconsin. Before a constitutional amendment is submitted to the voters, it must be approved by two separately elected legislatures (an election must intervene between first and second passage). Many amendments survive first passage but are not favorably acted on when reconsidered because the opponents wait until the latter time to mount their campaign. (A significant example of this occurred in 1957 and 1959. A judicial reform constitutional amendment was approved in 1957 on first consideration but was killed on second consideration in 1959.)

Third, and most important, was the role played by the Speaker of the Assembly. He and Chief Justice Wilkie were close personal friends, former political allies in the rebirth of the Democratic party in Wisconsin, and former law partners. The Speaker was committed personally to judicial reform; this personal commitment was strengthened by the chief justice's commitment. He was also the dominant figure in the legislature. The Democrats controlled both houses, and he controlled the Assembly.

The leader of the Democrats in the Senate, the president pro tem, expressed mild support for judicial reform, but the chairman of the Senate Judiciary Committee was an able spokesman for the work of his committee, and pressure from the leadership was not necessary. The fact that one of the other Senate members of the conference committee was a consumer-oriented nonlawyer was also important to Senate approval. This conference committee member became convinced of the need for the amendment, and his voice was persuasive with many who saw judicial reform as simply a relief measure for lawyers and judges.

Last but not least was the rule that conference committee reports had to be accepted or rejected as presented by the conference committee; no amendments were permitted. This forced anyone with an interest in judicial reform to support the conference committee amendment. It was clear that if the amendment were rejected, judicial reform would be dead for at least five years.

Setbacks to Reform

The balance of 1976 held two setbacks for reform advocates. The first was the sudden and unexpected death in May of Chief Justice Wilkie. He had for several years been the central figure in the judicial reform

movement. His successor as chief justice, Bruce Beilfuss, had never played an active role in the reform movement. The new chief justice immediately dispelled any doubts as to his commitment to judicial reform. He stated publicly several times shortly after he became chief justice that he would make the adoption of the constitutional amendment his first priority. Subsequent events showed that he lived up to that promise, although his style was completely different from that of his predecessor. Chief Justice Beilfuss had been on the bench for over 30 years and had never been active politically before that time. He did not have close political ties to any of the legislative leadership. His lack of political involvement was, however, an asset. He was genuinely liked by almost everyone, and his motives were not suspect. Where there had been an undercurrent of opposition to the constitutional amendment because it was feared by some that it was primarily an effort by the previous chief justice to increase his power and influence, no one saw these problems in the new chief justice's support for it. Consequently, some potential opposition was dissipated.

The second setback was the upset of the Assembly Speaker by an unknown law student in the September Democratic primary. The defeat was not related to judicial reform, but the loss of the support of the most influential legislator caused much concern. This concern grew to alarm when the Assembly Democrats chose as their new speaker an assemblyman from suburban Milwaukee. He was one of a new breed that was beginning to dominate the legislature—a young, full-time legislator with a political science, rather than a legal, background. His principal concern was to reestablish the legislature as the dominant branch of government and thus to exercise control over both the executive and judicial branches. He was particularly interested in having the legislature, rather than the supreme court, regulate the legal profession, and he supported a proposed constitutional amendment to that effect.

In January 1977, the conference committee chairman called a meeting of the principal supporters of judicial reform to discuss strategy. The first issue was whether to attempt passage of the constitutional amendment as early as possible in the 1977 session of the legislature, so it could be placed on a referendum ballot in April 1977, or to wait and have the amendment voted on in April 1978. The other legislators at the meeting were doubtful that legislative action could be taken in time for the 1977 election and suggested delaying in order to allow time to build up more support. Others, particularly the president of the citizens' organization and the author, urged that the effort appear on the 1977 ballot to maintain momentum, and argued that delaying would permit the opponents to organize and gain support. The proponents were responsible for any media attention given to the need for judicial reform. It was argued that the momentum that had been developed through the

Citizens' Study Committee report, the speeches by the chief justices, the discussions during supreme court elections, and the debates in the legislature on the constitutional amendment had all established a favorable public climate that might be dissipated by delay.

These arguments were persuasive, and the decision was made to proceed as soon as possible. The first problem developed immediately. The new Speaker of the Assembly let it be known that he intended to hold the amendment until he received a commitment from the supreme court and the bar that they would not oppose his proposed constitutional amendment on control over the bar. This idea was rejected immediately, and various pressures were brought to bear on the Speaker to change his mind. After approximately a week of telephone calls and visits involving the governor, constituents, and legislative allies of the Speaker, he was persuaded finally to take a neutral position on the judicial reform amendment and allow it to be introduced in the Assembly as soon as the proponents desired.

The Assembly Acts

Action on the conference committee amendment occurred in February. Both the Assembly and the Senate by substantial margins approved the amendment for submission in April 1977. The battle was not so easy as it had been the previous year for several reasons. The previous Speaker was absent, the proponents in the Assembly were not as knowledgeable about the issues or as effective on the floor, and second passage of a constitutional amendment was more difficult than first. One favorable factor was the absence of one of the two most vocal opponents of the amendment who had been a member of the conference committee. He had decided not to run for reelection and consequently was no longer a member of the Assembly. He had no large following, but was effective on the floor. The strongest opponent was the minority leader, a lawyer who was adamantly opposed to the amendment. He was effective, but the amendment was eventually passed by a wide margin.

The only significant debate in the Assembly concerned the number of questions to be submitted on the ballot. Under the State constitution, each separate issue in a constitutional amendment must be presented as a separate question on the ballot, and the second legislature passing the amendment would draft the questions. The proponents initially wanted only one question. The opponents wanted to divide the intermediate appellate court and single-level trial court issues. They were most opposed to the intermediate appellate court and thought that the best means to defeat it would be treating the matter as a separate question from the single-level trial court issue. Chief Justice Beilfuss ultimately decided not to oppose having the appellate court as a separate question. He thought that if the appellate court could not win on its own merits, it

did not deserve to win. Ultimately four questions were decided upon, and the author's draft of the four questions was adopted. The task in the Senate was somewhat easier than in the Assembly, for two reasons: the leadership of the conference committee chairman was effective, and the Republicans did not view the amendment as a partisan issue.

The lobbying effort of the proponents was carried out primarily by a few individuals. There was some effort to have constituents contact their representatives, mostly by members of organizations affiliated with the Committee for Court Modernization, including the League of Women Voters, the Federation of Cooperatives, and the Wisconsin State Bar Association. Although its lobbyist had been very helpful on first passage, the state bar, as an organization, played virtually no role on second passage. The governor's legislative agents made contacts shortly before the vote. Labor and industry were on record in support of the amendment, but their lobbyists did little. There was no organized opposition to and little constituent interest in the amendment; thus the only lobbying was by proponents, primarily in Madison. The opponents had little ammunition, since the questions regarding the single-level trial court and administrative and disciplinary authority in the supreme court were thought to be means of making judges work harder, and no one could be opposed to that. The need for an intermediate appellate court was clearly demonstrated by caseload statistics and the growing supreme court backlog, and the opponents had no credible means to refute them.

There were only six weeks between final approval of the amendment by the legislature and the referendum in early April. The proponents had arranged the previous November for Governor Lucey and Chief Justice Beilfuss to sign a letter requesting a large group of individuals and representatives of organizations to attend a meeting in December 1976 in the governor's conference room to form a citizens' organization to support the referendum. The list of persons invited was developed using the membership list of the Citizens' Study Committee, the participants' list of the 1973 citizens' conference, the membership list of the organization formed as a result of the citizens' conference, and officers of various professional, business, labor, legal, educational, and social groups. A substantial number of persons attended the meeting and unanimously voted to establish the Committee for Court Modernization, a nonprofit membership corporation to support the amendment, both in the legislature and in a referendum. The co-chairmen were the governor and the chief justice. A former Republican governor and a former chief justice were honorary chairmen. The officers were long-time supporters of judicial reform—the former president of the state League of Women Voters, the president of the state bar, the former chairman of the Citizens' Study Committee on Judicial Organization, and the executive director of the Federation of Cooperatives.

The corporation acquired office space at the Federation of Cooperatives and operated with volunteers. Material was developed for the news media and for speakers. A speakers' list was developed, and speaking dates were arranged. Personal visits were arranged with many representatives of the news media for the purpose of seeking editorial support. These visits were made primarily by the chairman of the Citizens' Study Committee and its former staff director.

A Final Push for Support

A decision was made to develop an advertising campaign to be used principally during the week before the election. An advertising agency was retained to develop and place newspaper, radio, and television advertisements at a budget of approximately $22,000. The advertisements had to be paid for in advance, and this requirement created a substantial financial problem for the committee. Individuals were asked for $100 contributions; approximately $10,000 was raised this way. An additional $15,000 was needed, however, and no immediate source was available. Corporate funds could not be used because of restrictions on corporate activities during elections. Contributions were not tax deductible, and this fact made raising money more difficult. The political action committees of the labor unions did not contribute any money. The state bar was asked for $5,000 but refused for various reasons; some bar leaders did, however, make substantial personal contributions. The ultimate salvation for the media campaign was a personal loan from the former chairman of the Citizens' Study Committee, who, at the request of the governor, had assumed responsibility for the committee's fund raising.

During the last four weeks of the campaign, supporters made many speeches to various groups, distributed brochures, held debates with opponents of the amendment, made appearances on public service programs, and wrote letters to newspaper editors. Editorial support for the four questions was overwhelming. Most of the advertising concentrated on only one issue—the need for the court of appeals. This emphasis was chosen because the need for the new court could be most dramatically demonstrated by one statistic—the median processing time for cases decided by the supreme court. In the year prior to the amendment, the figure was 19.4 months and was increasing. Little attention was given to the other three questions, but all four questions were treated as a single issue.

The strategy of having an early vote on the amendment to prevent the opponents from organizing proved successful. It was not until the week before the election that an opposition group was formed; this group did little more than release an announcement concerning its formation. Only one person, the minority leader in the Assembly, made a substantial

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personal effort to oppose the amendment. He previously had conducted personal campaigns against two constitutional amendments on other issues and had been succcessful in defeating them.

The Reform Campaign Concludes

The most dramatic event of the campaign was a two-day trip made by the governor, the chief justice, and the president of the Committee for Court Modernization. (The trip was paid for by the governor's political organization.) They visited each section of the state, conducted airport news conferences, gave speeches, attended receptions, and distributed news releases. Small groups met the trio at each airport, creating the flavor of a political campaign. The intense media coverage of the trip provided needed free publicity.

The day before the referendum the supporters were hopeful. Most "guesstimates" were that the four questions would pass with approximately 55 percent of the vote. The actual results far exceeded the expectations. The lowest margin of victory on any question was a 67.3 percent favorable vote on the court of appeals; the best was 78.9 percent on giving the supreme court power to discipline judges. The support was not limited to any particular region of the state.

The causes of the success were many:

1. The consistent and active support of three successive chief justices, who personally favored judicial reform and who made such reform their principal responsibility, second only to deciding cases;
2. The consistent and active support of a small group of dedicated persons;
3. The strong support of two powerful legislators—the Speaker of the Assembly and the chairman of the Senate Judiciary Committee;
4. At key times the support of the governor, who tied support for judicial salary increases to successful judicial reform;
5. The development of a consensus favoring judicial reform through speeches by the chief justices, the work of the Citizens' Study Committee, the constant efforts by a few lay persons, and four successive campaigns for the supreme court;
6. The lack of any organized opposition;
7. The formal, but not active, support of the state bar and the lack of strong opposition within the bar;
8. The formal support of the state's judges and the lack of strong opposition by any judges;
9. The formal, but not active, support by a wide range of business, labor, professional, and social organizations;
10. An amendment that had no large price tag attached to it and that depended on the legislature for implementation (this was particularly important for the single-level trial court);
11. The brevity of the campaign on the amendment, giving an advantage to the supporters and placing the opponents at a disadvantage;
12. A short, but effective, media campaign;
13. The avoidance of controversial issues in the amendment such as judicial merit selection, state financing of the judicial system, or the elimination of any elected officials; and
14. At all times, an awareness by the reformers of the political realities and the basics of judicial reform.

Reform Implementation

Although the amendment was adopted in April 1977, it did not go into effect until August 1, 1978. This delay was designed to permit the legislature to draft implementing legislation. Only one major provision of the amendment went into effect without implementing legislation—that which gave the supreme court administrative authority over the court system, with the chief justice as the administrative head of the court system.

The amendment required the legislature to establish a court of appeals by August 1, 1978, but the legislature had to determine the size, structure, organization, and jurisdiction of the court. The provisions pertaining to the trial courts did not mandate action by the legislature, but if a single-level trial court was to be established, it could be done only by legislative enactment. The discipline authority of the supreme court could be exercised only in accordance with procedures established by the legislature.

As soon as the results of the referendum were known, discussions began concerning who would lead the development of the implementing legislation. There was discussion within the executive branch of the possibility that the governor might appoint a committee to draft the legislation. Some preliminary work on the substance of the legislation took place. This plan did not develop, because within a week of the voting, Governor Lucey announced that he would resign in July to become Ambassador to Mexico. He decided not to contest legislative appointment of a committee. The Legislative Council created, therefore, a Committee on Court Reorganization two weeks after the election.

The Committee on Court Reorganization

Appointed to the committee were 10 legislators and 11 others, including four judges, two attorneys, three officers of the Committee for Court Modernization, a labor union official, and the author. The committee was directed to prepare legislation establishing the court of

appeals by August 1 and to formulate further legislation implementing the balance of the amendment by January 1, 1978. The time pressure on developing the court of appeals legislation was considerable; if the court were to be operational on August 1, 1978, as directed by the constitutional amendment, the judges of the court would have to be elected at the April 1978 election. The primary for that election was in February, and the deadline for filing was January 1978. This meant that the legislation would have to be passed no later than December 1977.

The committee began work immediately. It used the Citizens' Study Committee report as the basis for its work. It also relied heavily on the American Bar Association's Standards of Judicial Administration.

It was agreed early that the supreme court should have no mandatory appellate jurisdiction and that all appeals previously taken as of right to the supreme court would go to the court of appeals. A more controversial issue concerned the appropriate route of appeals that previously had gone from county court to circuit court (traffic, small claims, juvenile, mental health, and misdemeanors). Some wanted these appeals to continue to be handled initially at the trial court level; others wanted the cases to be heard by the court of appeals. The former were concerned with overburdening the court of appeals, and the latter were concerned that if these appeals were handled at the trial court level, it would be more difficult to establish the single-level trial court. In a series of close votes, the committee decided that all appeals would go to the court of appeals.

The other major controversial issues were the structure of the court of appeals, the number of judges on this court, and the districts in which these judges would be elected. The Citizens' Study Committee report had proposed a nine-judge court sitting in panels of three in three districts. The committee decided that the workload of the court required 12 judges. Four districts were created, primarily to permit Milwaukee County to be a separate district.

Changes in the Court Structure

The committee concluded its work by August 15. On August 31, the Legislative Council voted to introduce the bill in the September session. The bill was not considered at that session, however, and thus it was necessary for Governor Lucey's successor, Acting Governor Martin Schreiber, to call a special session in November. Before the special session, a small group of legislators and the lobbyists for the state bar and the county judges drafted a substitute for the Legislative Council's bill. The principal effect of the substitute was to have the county-to-circuit court appeals heard by a single judge of the court of appeals. This was intended to reduce the concern that the court of appeals would be

overburdened as soon as it came into existence, and to eliminate any objection to the merging of the circuit and county courts.

The special session lasted only a few days. Agreement had been reached in advance by the legislative leadership to adopt the substitute bill, and this was accomplished without substantial debate. The acting governor signed the bill in early December, and thus the foundation was laid for the court of appeals to begin functioning on August 1, 1978, in accordance with the constitutional mandate.

Also included in the court of appeals bill was a revision of the statutes relating to appeals. This revision was prepared by a committee of the Judicial Council that was appointed in 1975 at the request of the supreme court to revise all of the statutes and rules relating to appeals. The recommendations of the committee were submitted to the supreme court and the legislature in early 1977, but no action was taken by either body because of the events pertaining to the constitutional amendment. After the constitutional amendment was approved by the voters, the author, who was the reporter for the committee, revised both the statutes and rules to reflect the creation of a court of appeals. The statutory provisions were then included in the court of appeals bill by the Legislative Council committee and became part of the bill adopted by the legislature. The revised appellate rules were submitted to the supreme court and were adopted in May 1978, and became effective August 1, 1978.

The Legislative Council committee, upon completion of its work on the court of appeals, turned its attention to the single-level trial court and procedures for judicial discipline. The committee decided quickly and unanimously to recommend the creation of a single-level trial court. The ease with which this decision was reached surprised most observers in view of the length of time during which the concept had been discussed without any action. The major issues on which there was disagreement were the feasibility of making the change effective on August 1, 1978, or at a later date; identifying the counties that would lose judgeships; determining the salary levels of judges and court reporters; and the state's assuming responsibility for the salaries of all trial court judges, and if so, how soon.

It soon became apparent that there were no solid bases for delaying the merger; consequently, the August 1 date was adopted. A majority of the committee favored the state's assumption of full responsibility for judicial salaries on August 1, but the legislators wanted a gradual transfer. The latter plan was adopted. State assumption of the costs of the judicial system, a recommendation of the Citizens' Study Committee, was not seriously discussed because of budgetary limitations, although everyone assumed that this was an ultimate objective.

ABA Standards—Similarities and Deviations

The committee drafted the procedures for judicial discipline without major disagreement. The procedures conform to the Standards approved by the American Bar Association with a few substantial exceptions. The major difference was rejection by the committee of the idea that the same body should have both investigatory and adjudicatory functions. The committee decided that the two functions should be separated, with a judicial commission established to serve as an investigator and prosecutor and a panel of three court of appeals judges organized to find facts and to make recommendations to the supreme court on the discipline to be imposed. Some members of the committee wanted a jury rather than a three-judge panel to perform the adjudicatory function. In a compromise, provisions for a jury were included. (The jury was to be utilized only at the option of the judicial commission.) There was also disagreement on whether the executive director of the judicial commission had to be full-time and a lawyer. Again a compromise was adopted; the executive director was to be a full-time lawyer. These requirements would be instituted for a limited period only, so that an evaluation could be made of the need for both requirements.

The committee submitted its proposals in late winter of 1978; the proposals passed at a special session of the legislature in June of that year. The legislature adopted the committee proposals virtually without change, and thus the single-level trial court and the judicial discipline procedures also became effective on August 1, 1978.

The easy passage of the single-level trial court by the legislature resulted primarily from the committee's good work. Its proposals made the necessary substantive changes with only minor additional costs to the state treasury. As with the constitutional amendment, there was little in the bill for anyone to oppose, and thus there was no organized opposition to it. The county court judges favored it because the bill increased the salary and stature of these judges; those few circuit judges concerned about a loss of status for themselves could find no solid basis on which to oppose the change. There were some questions concerning whether the merger would result in more efficiency in the courts (and it was hard to prove that it would), but the proposal had a logic that was difficult to oppose. As long as no large price tag accompanied the merger, there was no reason to oppose it, and few did. Acting Governor Schreiber favored the bill strongly, thus assuring its passage.

The only other implementation necessary was the supreme court's adoption of rules exercising the administrative authority granted to the court by the constitutional amendment. To this end, the Judicial Council, at the request of the supreme court, appointed a committee to draft administrative rules. [The work of this committee is described in Knab and Hough, "Improving Court Management by Administrative Rule," 62 *Judicature* 291 (1979).] The proposals of that committee were submitted to the supreme court in late 1978 and acted upon in February and March 1979. The court adopted rules relating to the administrative districts of the trial courts as well as rules centralizing administrative authority in the director of state courts. Whether these rules will increase the efficiency of the trial courts remains to be seen.

Conclusion

Wisconsin now has a judicial system that in very large measure is in conformity with the American Bar Association's Standards of Judicial Administration. The only major deficiencies are the lack of a judicial merit selection plan and the continued local funding for the court system. The latter will probably be remedied in time, for only legislative action is needed to provide funds.

There appears, however, little prospect for a constitutional amendment on merit selection in the near future. There has been a noticeable change in atmosphere, and the subject can now be talked about without automatic rejection. This change was instituted by the use of a nominating commission by the acting governor in 1978. Approval was obtained from Governor Lucey in spring 1977 to formulate a plan for judicial nominating commissions, and such a plan was drafted for his office by the author. Before the governor took any action on the draft plan, he resigned from office. Late in 1977, approaches were made to the acting governor's appointments secretary, the same person who held the position under Governor Lucey. She raised the question with Acting Governor Schreiber, who was receptive to the draft plan. The need for such a plan was heightened when it became apparent that eight of the 12 persons elected to the court of appeals would be trial judges whose replacements would be selected by the governor. In late spring 1978, Acting Governor Schreiber announced the appointment of the nominating commission; he used it until he left office in January 1979. The new governor has stated that he would continue to use a nominating commission, but has not done so. The state bar has prompted him to appoint a commission, but he had not done so when this article was written.

Judicial reform of major proportions was accomplished in Wisconsin through the cooperative efforts of several chief justices, governors, legislators, and a small group of dedicated private citizens. The process required staying power, recognition of basic principles, awareness of when and where compromises can and must be made, and the development of a public climate sympathetic to the need to reform the courts. All of these combined in Wisconsin to produce a judicial system similar to the model proposed by the American Bar Association.

NEW YORK

Court Reform: The New York Experience

Frederick Miller

Arthur Vanderbilt animated the literature of political science with a nearly definitive nondefinition of court reform. It is not, he observed, a sport for the short-winded.

Each time I encounter Vanderbilt's wisdom, I am reminded of the description uttered by an impatient young court reformer in New York at a particularly frustrating juncture in the process. "Hell," he said, "it's like jogging down the Ho Chi Minh trail unarmed."

I think it is true that, as with most reform movements, the court reform effort has aspects of a grueling relay race. It is a long run through history, and no single runner covers the full course. The purpose of this paper is to trace the recent steps of progress made in court reform in New York State, to share with the reader the political scenery along the way, and to identify the front-runners and their strategies. It is not a primer, but an account.

The adventure of court reform in New York is perforce incomplete. While there has been consistent progress, and recently, bursts of success, there remains a long way to go. Indeed, perhaps the race will never be over.

New York Courts: Facts and Figures

New York is a large and complex state. So too are its institutions of government—a public bureaucracy of more than one million employees, 62 counties, 61 cities, 931 towns, and 556 villages. Of its 17 million people, slightly fewer than half live within the five counties comprising New York City. The remainder live upstate. New York politics is serious,

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Frederick Miller is the Legislative Counsel for the New York State Office of Court Administration, a position he has held since 1974. Mr. Miller earned his AB degree from Siena College, Loudonville, New York, and his JD degree from the Albany Law School of Union University, Albany, New York.

lively, and frequently Byzantine. Traditionally, but not without exception, the Republican party draws its strength from the suburban and rural voters upstate; the Democrats, from the urban voters. But the Conservative, Right-to-Life, and Liberal parties are also represented. In philosophy, downstate is thought to tilt to the left; upstate, to the right. The state has an aggressive and healthy press and powerful labor unions. Its many citizens' interest groups are public-spirited and influential. The cost of government in New York exceeds 33 billion dollars annually. The state's official flower is the rose.

The State Court Structure

New York also has a large and complex court system, reported to be the busiest in the nation, if not in the western world. The judiciary article of the state constitution, adopted in 1962, ordained the judicial system a "unified court system," despite a broad array of separate trial courts, fragmented administrative authority, and a lack of central budgeting. It processes more than two million cases each year, ranging from minor infractions of municipal ordinances to multibillion-dollar commercial disputes and constitutional cases of landmark dimension. The system has two principal appellate courts: a high court that is called the court of appeals, and four regional appellate divisions of the supreme court that serve as intermediate appellate courts. Before 1978, the appellate divisions were also responsible for administering the trial courts within their regions, which are called judicial departments.

There are 11 different trial courts, each with its own jurisdiction. The supreme court, analogous to the superior court in most states, is the principal statewide trial court. The supreme court has unlimited original jurisdiction. Within New York City, it is the court that hears major civil and criminal cases. Elsewhere, the supreme court usually exercises only civil jurisdiction. Upstate, felonies are tried normally in the county courts. Family law matters in each county are heard by the family court, and probate proceedings are heard by the surrogates' courts. In many small counties, the county judge also holds the office of surrogate, or judge of the family court, or both. Tort and appropriation claims against the state must be sued in a statewide court of claims.

New York City has two other citywide courts of limited civil and criminal jurisdiction: the civil and criminal courts. Upstate there are town, village, and city courts, with the exception that in two suburban counties on Long Island there is a system of district courts that supplants city and town courts.

The state's unified court system has 3,500 judges. Of these, 2,400 are town and village justices who were formerly called justices of the peace. They are elected locally and need not be lawyers. Most serve part time. All other judges are required to be lawyers. Most are elected by the

partisan ballot, although some are appointed by the governor and some by the mayors of cities, including the bench of the family and criminal courts in New York City.

Judges serve for terms of varying length, as prescribed by the constitution or by statute. They may be disciplined by a variety of methods, including impeachment. The usual method is by complaint of the State Commission on Judicial Conduct. Except for town and village justices, retirement is mandatory on December 31 in the year in which a judge reaches age 70. Judges of the appellate courts and supreme court may continue in service to age 76 if they are in good health and if need exists for their services. For each two-year extension after age 70, the judge undergoes a medical examination, and bar associations are consulted concerning the judge's performance on the bench.

Since 1978 the unified court system has had a chief administrator of the courts appointed by the chief judge of the court of appeals. It is a constitutional office, and a judge is eligible for appointment. The chief administrator, on behalf of the chief judge, is responsible for supervising the administration and operation of the unified court system. Statewide policy is approved by the court of appeals in consultation with the Administrative Board of the Courts. On that body sit the chief judge and the four presiding justices of the appellate divisions.

The chief administrator's principal responsibilities include preparation of the courts' annual budget, establishment of court terms, assignment of judges, promulgation of rules of judicial conduct, regulation of court practice, hiring and supervision of nonjudicial personnel, labor relations and collective bargaining, collection of statistics, intergovernmental relations, continuing education programs for judges and court staff, and development of court-improvement projects.

The chief administrator heads an office of court administration. He has two principal deputies: one for all courts in New York City and a second for all other courts. Both are judges. He is assisted by administrative judges in various counties and multicounty judicial districts, and by regional staff offices. He and the chief judge consult with the Administrative Board of the Courts and a 22-member judicial conference composed of trial judges and lawyers from various areas throughout the state.

Past Efforts to Reform the Courts

In 1976, the state legislature authorized unification of the court system's fiscal and personnel structure. Most trial courts previously were financed by units of local government. The state funded the court of appeals, some appellate division operations, the court of claims, and the administrative office for the courts. The state also provided limited

assistance for salaries of county-level judges and full-time judges of the larger city courts.

The 1976 Unified Court Budget Act merged 120 separate municipal court budgets into a statewide judicial budget funded by the legislature. All courts were included except those in towns and villages. The act also transferred 9,500 local court employees to the state payroll and directed court administration to establish a statewide personnel and salary structure. That massive undertaking was completed in 1979. Early in 1980, the state assumed financial responsibility for the noncapital cost of operating the courts financed by the Unified Court Budget Act.

That cost approached 325 million dollars in 1979. The annual budget for the courts is prepared by the chief administrator. It must be approved by the court of appeals before transmittal to the governor by the chief judge. The governor presents it to the legislature without revision, but he may make any recommendations he deems proper. The legislature determines the final appropriations for the courts, subject to the veto powers of the governor.

The structure of the unified court system and the jurisdiction of its courts are detailed in the judiciary article of the constitution. Structural court reform usually requires constitutional amendment. The constitution can be amended in one of two ways: by constitutional convention or by concurrent resolution of two separately elected legislatures, subject to ratification by the voters. Since each legislature sits for two years, amendment by concurrent resolution normally requires two to four years for completion; another year can be added for necessary statutory implementation.

Unified court systems share common characteristics: central administration, a consolidated court structure, unified budgeting, and centralized rule-making authority. Effective court systems may have other features that are not necessarily related to unification, such as merit systems for the selection of judges and efficient machinery for dealing with complaints of judicial misconduct or disability.

A Constitutional Convention

The first major reforms to the New York judicial system occurred at the Constitutional Convention of 1846. The convention cast a lengthy shadow. While there have been many subsequent revisions to the judiciary article, the present organization of the courts basically was framed in 1846 by the convention.

The purpose of the 1846 convention was to reorganize the legacy of a predecessor, the Constitutional Convention of 1821. That convention, the second in the state's history, was decidedly a farmers' affair. Posturing as advocates of judicial reform and dominated by agricultural interests, the conventioneers' real purpose was the ouster of the incumbent judges of the supreme court. In this the convention succeeded; at best, its other contributions to judicial reform were cosmetic and insubstantial.

The convention of 1846 had a preponderance of lawyers over farmers, and it adopted many reforms that were considered modern at the time, including the popular election of judges, the transfer of procedural rule-making authority from the courts to the legislature, and legislative removal of judges for cause. The 1846 convention also established the court of appeals as the state's highest court of appellate jurisdiction, and abolished independent chancery and circuit courts. The jurisdiction of these courts was merged into the supreme court, the new statewide court of complete and original jurisdiction. The convention also established general terms of the supreme court. These would later evolve into the state's intermediate appellate courts—the present appellate divisions. County courts, then courts of common pleas, narrowly escaped abolition through merger, but their jurisdiction was substantially curtailed. And for the first time, the state's probate courts, also of colonial origin, were incorporated into the constitution as surrogates' courts. The convention also continued local city, town, and village courts.

The 1846 convention produced a judicial system of remarkable durability. The system's organizational structure paralleled local political boundaries of government (towns, villages, cities, and counties). Trial courts were virtually independent of each other, in terms of both administration and jurisdiction. The state's financial obligation to the courts was minimal. By and large, each local court looked to its local government unit for its budget needs, including facility needs. If the local judge had clout, and most did, there was little problem securing adequate funds. With few exceptions, each court was self-administered, and multijudge courts were administered by the presiding judge or board of judges. Other than collecting and reporting statistics by a judicial council established in 1934, government imposed little or no standards or administrative controls. In the meantime, the number of specialized courts multiplied. In New York City, for example, there were 190 separate trial courts in operation by the 1950's; each had its own jurisdiction, administration, budget, and personnel.

World War II: A New Era

In a real sense, the New York system fell victim to World War II. When pressed by the so-called "midcentury law explosion," the system proved too rigid to adapt to the flood of litigation that poured into the courts after the war, particularly motor vehicle negligence cases. It is estimated that postwar traffic almost doubled the number of traffic injuries between 1944 and 1948, causing a corresponding increase in negligence litigation. Postwar inflation added substantially to litigation

cost. Jury awards increased dramatically. Litigants began to avoid the lower trial courts, with their limited monetary jurisdiction, in hope of greater financial success in the supreme court. The initial impact was on the supreme court calendars, but other courts fared no better. Great shifts in population, disintegration of families, increasing poverty, and rising crime rates would soon translate into persistent congestion and delay in the criminal and family law courts.

Beginning in the late 1940's, the legislature and the courts responded to the growing crisis in the civil courts with a series of procedural devices designed to speed the flow of cases: pretrial conferences, preferences for cases considered more deserving of supreme court processing, pretrial discovery, and use of special referees. These patches proved inadequate. Three- and four-year delays in case processing were commonplace in the system. More basic reforms were necessary.

The Tweed Commission's Attempts

Early in January 1953, Governor Thomas E. Dewey delivered his annual message to the legislature. A portion of that address was devoted to a catalog of conditions prevailing in the courts. The governor described these conditions as "signs that we have arrived at a time that cries out for improvement in the administration, procedure, and structure of our courts." He called upon the legislature to create a temporary commission on the courts to conduct a complete evaluation of the state's court system on a scale comparable to the 1846 revisions, including merit selection of judges.

The legislature responded and authorized an 11-member temporary commission, soon to be called the Tweed Commission after the name of its chairman, Harrison Tweed, an eminent lawyer of the New York City bar. In a related move that year, the legislature gave final approval to a constitutional amendment authorizing the temporary assignment of judges within the New York City trial courts.

The Tweed Commission promptly began what was to become the most thorough, but frustrating, court-reform project in the state's history. A legislative proposal establishing a judicial conference for the state patterned after the federal courts' judicial conference, met with early success. Despite a five-year effort, $800,000 budget, and support from the press and civic organizations, however, the commission's simplified statewide court-system plan met an embarrassing defeat. Highlights of the Tweed Commission's original plan, released in early 1955, included the following:

1. Continuation of the court of appeals and the appellate divisions of the supreme court as the state's final and intermediate appellate courts;

2. Continuation of the supreme court as a statewide court of original, unlimited jurisdiction;
3. Merger of the surrogates' courts and the court of claims with the supreme and county courts;
4. Consolidation of New York City lower trial courts into a single citywide court with limited civil and criminal jurisdiction;
5. An upstate system of county courts having civil, criminal, family, and probate jurisdiction;
6. A system of magistrates' courts in upstate towns and cities with jurisdiction in traffic and minor criminal proceedings;
7. Central court administration by a judicial conference composed of the chief judge of the court of appeals and the four presiding justices of the appellate divisions. The appellate divisions would be responsible for local court schedules, assignments, and practice rules; and
8. State financing of the courts with "appropriate" reimbursement by local governments.

This is hardly radical stuff. Nonetheless, the plan was snagged immediately in a thicket of politics. Not unexpectedly, political leaders and their allies were fearful of a loss of their traditional influence in the courts, particularly in the selection of judges, the appointment of nonjudicial personnel, and the patronage dispensed by surrogates' courts. A look at the 1952 payroll of the New York City courts suggests the extent of that influence. Of 199 leaders of both political parties, 57 held court jobs. More than 70 percent of the legal jobs were held by nonlawyer politicians. According to the State Crime Commission in 1953, political leaders routinely selected both judges and their staffs.

Fearing rejection of the plan, the commission sought to accommodate the special interests. Revisions were offered and rejected. More revisions were made. To many observers, the final product that was submitted to the legislature in 1958 was but a shadow of the original. Near the end of the session, the plan passed the state senate overwhelmingly. Four days later it was defeated by a one-vote margin in the assembly. The commission was permitted to expire quietly.

At a press conference following the session, Tweed publicly blamed "judges and other politicians" for killing the court-reorganization plan. He accused them of being motivated by "self-interest" and having used "skilled and subtle" influence against the plan in the legislature. The inertia of the organized bar was also blamed. Another analysis suggests that the commission's willingness to compromise with the opponents of its proposals, coupled with a lack of public and political support from the Harriman administration, were equally important reasons for the commission's lack of success. Moreover, Tweed's prominence as a Republican did not prove particularly helpful with the Democratic

membership in the state assembly. Nonetheless, public support for the commission's proposals eroded with each announcement of another compromise. The League of Women Voters withdrew its support, and denounced the plan as "system reform" and "wholly unacceptable."

Set in proper historical perspective, it is inaccurate to characterize the Tweed Commission's efforts as a total failure. The governor and the legislature met an immediate storm of protest from the press and citizens' interest groups. Undoubtedly embarrassed, Governor Harriman promptly requested the judicial conference, itself the product of a Tweed Commission study, to draft a comprehensive reorganization plan for the courts. The League of Women Voters and the Citizens' Union presented their own plan, which was prepared by the Institute of Judicial Administration and was similar in many respects to the original Tweed plan. Also, the Democratic and Republican legislative leaders responded with their own proposals.

A New Plan of Reform

The judicial conference, then a nine-judge agency chaired by the chief judge of the court of appeals, unveiled its proposals for reorganization in November 1958. The plan borrowed heavily from the Tweed proposals. It called for continuing the existing appellate court structure, abolishing the court of claims, continuing the supreme court as the statewide trial court of general jurisdiction, continuing the surrogates' court, and establishing a statewide family court. The New York City lower courts would be consolidated and divided into a civil and a criminal court. Outside New York City, the local court structure would consist of county courts and, on the municipal level, city courts in large cities and a district court system to replace town and village courts.

With respect to administration, the conference proposed that statewide policy be established by the judicial conference and supervised by the appellate divisions. The conference and appellate divisions would share supervisory authority over the preparation and submission of court budget requests. The conference made no proposal for state financing of the courts.

Despite obvious compromises, the conference's proposals received wide public support from influential citizen groups, prominent members of the judiciary, and the legal community. Once again, however, the politicians went quietly to work. The result would be a constitutional overhaul of the courts proposed by Governor Rockefeller that incorporated many of the conference's proposals but that left intact the largely Republican upstate court system. It was a stunning political victory for the new governor—the first court reorganization in a century. Two years later, in 1961, when the proposal required second approval by

the legislature, fewer than 10 legislators voted against it. With aggressive support from the governor, the chief judge of the court of appeals, citizens' interest groups, and the press, it was no surprise that the voters approved the proposal by a margin better than four to one.

The Constitutional Convention of 1967

Of hardly more than footnote importance to the court-reform movement in New York was the highly political and ill-fated Constitutional Convention of 1967. By all accounts, the convention produced a remarkably unremarkable judiciary article. Court merger and the establishment of merit selection systems for judges were rejected. State funding of the courts got halfhearted and limited support. The only notable reform was a proposal to centralize administrative authority in the court of appeals and an administrative office for the courts.

The voters soundly rejected the convention's handiwork. Criticism by the press and citizens' interest groups of the inadequacy of the proposed judiciary article was widespread. Perhaps more important was the convention's decision to submit the new constitution, which included a repeal of New York's constitutional ban on aid to parochial schools, to the electorate as a single package. That decision, and the voters' reaction, would nonetheless be remembered at another time in the court-reform movement.

A New Look at Reform

In 1969, the League of Women Voters proposed the establishment of another temporary commission to study the courts. Governor Rockefeller responded favorably in his 1970 State of the State Message to the legislature. The time had come, he said, for a fresh look at the state's court system. He alluded broadly to problems of delay in processing of criminal and family law matters and pledged to submit legislation establishing a temporary commission to study the courts. What resulted was an 11-member commission composed of public officials, lawyers, and community leaders. Chaired by State Senator D. Clinton Dominick, the Dominick Commission had a report deadline of February 1, 1971, and all court-reform proposals in the legislature were held pending receipt of that report. Nearly two years past that deadline, the commission released its study—a three-volume report containing 180 reform recommendations, including these proposals:

1. Central court administration by a chief administrative judge appointed by the chief judge of the court of appeals;
2. State financing of all courts except town and city courts. This financing would include probation and capital construction;

3. Discipline of judges by a state commission on judicial conduct and a permanent court on the judiciary;
4. Merger of the supreme court, the court of claims, the county court, the family court, and the surrogates' court into a statewide superior court and continuation of the existing appellate structure and the civil and criminal courts in New York City; and
5. Establishment of district courts in larger counties to replace town, village, and city courts.

With respect to judicial selection, the Dominick Commission proposed only slight changes in the status quo. Judicial nominating conventions for the superior court would be eliminated; otherwise, judges would run in partisan elections. Appointed judges would continue to be appointed, but from lists proposed by nominating commissions.

Governor Rockefeller, who later that year would resign from office, was apparently unsatisfied. He unveiled his own court reform program in April. He endorsed the Dominick Commission proposals for overhauling judicial disciplinary machinery, but he outpaced the commission considerably in the selection of judges, financing, and administration. These were ambitious proposals by a governor who had become impatient with an unresponsive and ill-administered court system. His reforms included the following:

1. Gubernatorial selection of judges of the court of appeals and supreme court, with the requirement of screening panels and senate confirmation;
2. Central court management by an administrator of the courts appointed by the chief judge with approval of the governor and state senate; and
3. Central court funding by the state to be financed by a corresponding reduction in state aid to local government.

Together, the Dominick Commission and the Rockefeller proposals were too much for the legislative process to digest in a single year, particularly when the legislative agenda in 1973 would include a massive overhaul of the state's laws on drug abuse. Court reform was shelved politely for further study by a joint legislative committee established near the session's close.

A New Judge and a New Chance

Outside the legislative arena, a political event occurred in 1973 that would influence significantly the legislature's direction concerning court reform—the election of Charles D. Breitel as chief judge of the court of appeals. Since 1870, the judges of the court of appeals had been selected by popular statewide election. But a political tradition developed that

allowed the leadership of the Democratic and Republican parties to fill vacancies on that court by agreement. This tradition was particularly strong with the office of chief judge: the nominee of both major parties would be the senior associate judge of the court. Minor parties usually followed suit. Nominations were made in party conventions, with state political leaders in command.

In 1972, however, the state changed its election rules. An aspirant for the court of appeals could outflank the convention and secure a major party nomination by winning a statewide primary. To the dismay of the legal establishment, citizens' interest groups, and the press, the result was a series of election spectaculars for seats on the court of appeals.

In 1973, Chief Judge Stanley H. Field would retire. The senior associate judge, also near mandatory retirement age, announced that he would not be a candidate for the top job. Next in seniority was Charles D. Breitel, a legal scholar, a former prosecutor, a former counsel to Governor Dewey, and a Republican. Breitel had served 12 years on the court, and earlier had served on the trial and appellate benches in Manhattan. Following tradition, he could count on the nomination of both the Republicans and the Democrats. As expected, Breitel was nominated by the Republicans; an undisciplined Democratic leadership defaulted, however. There followed a no-holds-barred primary in the Democratic party with six candidates on the ballot. The winner was Jacob D. Fuchsberg, a successful and prominent trial lawyer from New York City. In the November election, Breitel would defeat Fuchsberg and a Conservative Party candidate. The following year, Fuchsberg would once again go the primary route and win a contested election to fill one of two vacancies for associate judge.*

The 1973 election for chief judge was bitter and was widely reported to have strained relationships within the high court. Certainly it would stiffen Breitel's resolve to use the influence and prestige of his new office to eliminate the partisan ballot in the selection of judges of the court of appeals. Also helpful was a joint statement by all the judges in the court that urged the elimination of the partisan ballot.

The Gordon Committee

Within the legislature, talk of court reform continued. The Dominick Commission was followed in 1973 by a Joint Legislative Committee on

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* This election would add fuel to the movement for appointment of judges to the high court. The principal loser was the court's only black judge, Harold A. Stevens. A Democrat and former presiding justice of the appellate division in Manhattan, Stevens had been appointed to the court on an interim basis by Governor Wilson, a Republican. Outspent in the Democratic primary, he lost his party's nomination and ran, unsuccessfully, on the Republican, Liberal, and Conservative lines in the general election.

Court Reorganization, chaired by State Senator Bernard G. Gordon, a Republican. The Gordon Committee promptly produced four major proposals:

1. Appointment of judges of the court of appeals by the governor, subject to approval by the senate;
2. An overhaul of the machinery for disciplining judges by establishing a State Commission on Judicial Conduct whose determinations would be subject to review by a five-member court on the judiciary;
3. Central court management by a chief administrator of the courts appointed by the chief judge of the court of appeals, subject to approval of the senate; and
4. State financing of the courts, subject to partial reimbursement from local governments.

The 1974 legislative session passed three of the Gordon Committee proposals: one overhauling the judicial discipline machinery, a second proposing central court administration, and a third recommending state financing of the courts. (The last two were combined in one resolution.)

Judge Breitel was sworn in as chief judge of the court of appeals on January 1, 1974. From the beginning it was clear that he had an agenda for the courts and that he was to be an active advocate of reform. One of his first moves was to appoint Richard J. Bartlett as his state administrator. Bartlett had recently been elected to the upstate supreme court bench. He was a former assemblyman and knew his way around the halls of government. He was popular, aggressive, and respected in the legal community. He had chaired a state commission that had rewritten the state's penal and criminal procedure codes.

The chief judge next arranged for the four appellate divisions to delegate their management authority to his new administrator. In effect, he administratively centralized, albeit by treaty, the management of New York's massive court system. In a related move, a deputy administrative judge was appointed to supervise all courts within New York City. This responsibility was divided previously between two appellate divisions. Extensive intercourt assignments of judges followed, and the result was a practical merger of the city-based courts.

To emphasize these structural reforms, the new administration developed standards and goals for the timely disposition of civil and criminal actions in the state's trial courts. Thus, for example, it became the court system's official policy that the trial of a felony case would commence six months after the indictment was filed. This and other goals were to be achieved in stages and by a system of controls on case processing and monitoring by administrative judges.

In yet another unprecedented stroke, Breitel addressed the New York

State Legislature, the first and only event of its kind. The chief judge used the occasion not to survey the state of the courts with a recital of statistics but to advance in concise terms five fundamental reforms: unified administration; consolidated trial courts; state funding of courts; merit selection of judges; and administrative processing of judicial discipline cases, subject to judicial review.

The reforms proposed by the chief judge were not unprecedented. They reflected modern trends in court reorganization throughout the nation. In large measure the proposals incorporated principles developed by the American Bar Association's Commission on Standards of Judicial Administration. (Breitel was a member of this ABA commission.) The chief judge would add brush strokes of his own, undoubtedly drawn from his long career in government, including service on the President's Commission on Law Enforcement and Administration of Justice. One example was the chief judge's preference for judicial confirmation commissions in merit appointment systems. "It is healthy," he said, "to place direct political responsibility on the executive for the quality of his judicial appointments. Moreover, nominating commissions are manipulatable, but often beyond detection, just because too much power is vested in a membership without public or political responsibility."

In this particular area, the chief judge would ultimately compromise by agreeing to a judicial nominating commission for judges of the court of appeals. But it was not the sacrifice of a principle. The commission is so tightly structured by constitution and statute that manipulation of its nominating process is impossible.

The chief judge's campaign for court reform could not have been better timed. The 1962 reorganization had not produced adequate efficiency in the trial courts. By 1973, the need for major repair was obvious and certainly well documented. Governor Carey, elected in 1975, had campaigned on the need for court reform. He would assign court reform a high priority during his administration, and his counsel would take an active and personal interest in the project. Cyrus Vance, then president of the Association of the Bar of the City of New York, would head a gubernatorial task force on court reform. In the legislature, the chief judge would have an important ally in the chairman of the Senate Judiciary Committee.

Popular Approval of Court Reform

In November 1975, the voters approved one of the Gordon Committee's court-reform proposals—the establishment of a permanent State Commission on Judicial Conduct. His second proposal, to create a chief administrator for the courts, coupled with a state-financing provision, was narrowly defeated. Two reasons for its defeat are generally believed to have been (1) Breitel's strong opposition to a provision of the

amendment that would require senate approval of the chief administrator and (2) the reluctance of the voters to authorize what they perceived to be another commitment for state spending.

The work for further reform continued during the 1976 legislative session. By now the issues had narrowed to selection of judges of the court of appeals, central court administration, and further improvements in judicial discipline. The struggle to reach agreement within the legislature was intense and continued literally into the final hours of the session. But negotiations collapsed, and the session ended. To most observers, it appeared that court reform, because of New York's complex amendment process, had been stalled for several years.

They were wrong. In midsummer Governor Carey called the legislature into extraordinary session with an agenda limited to court reform: a merit selection system for judges of the court of appeals; the creation of the constitutional office of chief administrator of the courts and the transfer to the chief administrator of the administrative authority possessed by the appellate divisions; and the establishment of an 11-member Commission on Judicial Conduct with authority to discipline judges, subject to review by the court of appeals.

With approval of the chief judge, Judge Bartlett also presented the governor and legislative leaders with a proposal developed by the office of court administration to unify the court system's fragmented funding sources into a single state budget, without the necessity of constitutional amendment. Several cities, including New York, were then in serious financial straits; state assumption of court costs became an opportunity for the state to assist local governments financially as well as to improve its courts.

The extraordinary two-day session produced extraordinary results in blitzkrieg fashion. The legislature approved all three constitutional amendments and also a Unified Court Budget Act. But the reformers had to make one potentially disastrous concession to legislative leaders—the three amendments would be consolidated in a single concurrent resolution. Their immediate purpose was perceived as an effort to secure passage of the package in the legislature, but to those who remembered the Constitutional Convention of 1967, the real purpose of the consolidation was voter defeat of the entire package. After all, the polls indicated that the voters overwhelmingly opposed the appointment of judges.

Second passage of the constitutional reforms by a separately elected legislature occurred in 1977. At that session, the controversy within the legislature focused not on these reforms' merits but on the form in which the proposals would be presented to the voters. The Democratic leadership in the assembly favored a single submission; the Republican senate, prodded by Senator Gordon and the reformers, who feared loss

of the entire package, favored separate submissions of the three issues. Before the session, Judge Bartlett's legal staff had investigated whether the three-piece package was severable. They uncovered a historical precedent from 1874 that appeared to sanction submission of the amendments to the voters as three separate questions. This discovery would resolve the impasse in the legislature. Nonetheless, the legislative leaders directed that the elimination of the elective process for judges of the court of appeals be presented as the first issue on the ballot. Again the speculation was that they wanted amendment 1 to be defeated and to drag amendments 2 (central administration) and 3 (judicial discipline) down with it.*

In the postmortem that followed defeat of the central administration amendment in November 1975, many observers believed that the boldface caption on the ballot, "Administration and Financing of the Courts," was in large measure responsible for voter rejection of the amendment. Indeed, the financing aspect of the amendment was not in fact a revision of substance and should not have been given such emphasis. A similar misjudgment would not happen in the 1977 referendum. When it came time for the attorney general to frame the questions for amendments 1, 2, and 3, care was taken to ensure that their syntax would be neither misleading nor overly technical.** There would be no red herrings to undo the efforts that had occurred since 1974. The official ballot posed the following three questions to the voters:

> *Selection of Judges of the Court of Appeals*—Shall the proposed amendments to Article 6 of the constitution in relation to the creation of a judicial nominating commission and the manner of selecting judges of the court of appeals, be approved?
>
> *Administration of the Unified Court System*—Shall the proposed amendments to Articles 6 and 7 of the constitution in relation to the administration of the Unified Court System, be approved?
>
> *Judicial Conduct*—Shall the proposed amendments to Article 6 of the constitution in relation to the creation of a commission on judicial conduct and the admonition, removal, censure, or retirement of judges or justices, be approved?

The next challenge was selling the amendments to the public. While there was little or no public opposition to amendments 2 or 3, the

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* Appendix I contains the official abstract of the provisions of the three amendments.

** At the 1978 legislative session, the state's election law was amended to require that ballot questions henceforth be written "in a clear and coherent manner using words with common and everyday meanings." It is unclear whether this is an example of legislative pique or of populist reform.

reformers feared that unanswered opposition to amendment 1 would result in the defeat of all three. Citizens' interest organizations, led by the League of Women Voters and the Committee for Modern Courts, responded in typical fashion with statewide public information campaigns. In addition, a number of prominent lawyers of the New York City bar organized Court Reform Now, a committee to promote passage of the three amendments.

Court Reform Now: A New Approach

Court Reform Now raised $124,000—primarily from large New York City law firms—and hired a high-powered public relations firm to direct the promotional campaign. Because of budget constraints, the effort consisted primarily of spot radio commercials throughout the state. The theme of the campaign was "take the clubhouses out of the courthouses." (In New York political parlance, the clubhouse is where one might find a "smoke-filled room.") A group in opposition to amendment 1, consisting mainly of elected judges, was also organized; this Ad Hoc Committee for Preservation of an Elected Judiciary spent $17,000 for its media campaign.

Prominent members of the judiciary, including judges of the court of appeals, assisted in the public information campaign. They gave speeches, granted interviews, wrote letters to newspaper editors, and contributed newspaper articles. To the surprise of many, the daily press throughout the state was nearly unanimous in expressing editorial support for all three amendments.

The campaign clearly succeeded. All three amendments were approved handily by the voters. Two challenges would remain: the constitutionality of the legislature's submission of the amendments to the people separately, and preparation of the necessary implementing legislation. The amendments would take effect on April 1, 1978.

The attorney general defended the validity of the submission procedure. When the case ultimately reached the court of appeals, the state bar association, the Association of the Bar of the City of New York, and the Committee for Modern Courts filed *amicus* briefs in support. The court upheld the results of the referendum and dismissed the challenge.

Judicial Initiative

With respect to implementing legislation, the chief judge again took the initiative. At the beginning of the 1978 legislative session, he requested the state administrator to organize drafting committees to prepare necessary implementing legislation in consultation with the bar, judicial associations, court officials, and agencies affected by the amendments. Three drafting committees were organized. Participants

included representatives of the New York State Bar Association, the Association of the Bar of the City of New York, and the staff of the Governor's Counsel. The committees' proposals were submitted to the legislature and further drafting sessions were held with the appropriate committee chairmen and their staffs.

The committees' proposals were accepted substantially by the legislature, with one notable exception. The chief judge favored limiting the field of nominees for chief judge to three well-qualified candidates. The legislature and governor would agree ultimately upon seven individuals, presumably to permit all six sitting associate judges to qualify for elevation to the top post. The only other area of significant controversy involved the confidentiality of proceedings of the new Commission on Judicial Conduct. The lobbying efforts of the judicial establishment would succeed, despite the opposition of the commission and the news media to preserving confidentiality until the conclusion of the commission's deliberations in each case.

Judge Bartlett was installed as chief administrator of the courts by the chief judge, with the advice and consent of the presiding justices of the appellate divisions. By a formal delegation of administrative authority approved by the court of appeals, the chief administrator of the courts was given broad administrative authority over the trial courts, but less direct authority over appellate court operations, except for budget and personnel matters.*

This "new" administration was perforce a brief one. The chief judge would retire on December 31, 1978, because of mandatory retirement age. And Judge Bartlett would leave office early in 1979 to become dean of the Albany Law School.

On December 15, the State Commission on Judicial Nomination recommended to the governor seven persons who were considered well qualified for the office of chief judge of the court of appeals. It was a blue-ribbon list, balanced politically as well as geographically, that included three associate judges of the court, three associate justices of the appellate divisions, and a former justice of the state supreme court.

On January 1, 1979, Governor Carey announced his choice for chief judge: Lawrence H. Cooke, an associate judge of the high court with a broad and respected record as a trial and appellate judge. The nomination was widely acclaimed by judges, lawyers, citizen-interest groups, and the media throughout the state. In short order, the new chief judge was unanimously confirmed by the state senate. He promptly

* Appendices II and III contain the charter documents of central court administration in New York: statewide standards and administrative policies, and the chief judge's delegation of administrative authority to the chief administrator of the courts.

turned to the task of selecting a new chief administrator. He tapped Herbert B. Evans, an associate justice of the appellate division in Manhattan, an experienced trial judge, and a public administrator.

Here begins a new chapter, as yet unwritten, but ripe with promise.

Appendix I

Official Abstracts of Constitutional Amendments

Amendment One

The purpose and effect of this proposed amendment is to provide for the appointment, rather than election, of the Chief Judge and the six Associate Judges of the Court of Appeals. The Chief Judge and Associate Judges in office on April 1, 1978, will hold their offices until the expiration of their terms. Their successors will be appointed by the Governor, with the advice and consent of the Senate, from a list of persons found to be well-qualified and recommended by a twelve member bi-partisan judicial nominating commission. Four members of such commission would be appointed by the Governor, four by the Chief Judge of the Court of Appeals, and one each by the Speaker of the Assembly, the Temporary President of the Senate, the Minority Leader of the Senate and the Minority Leader of the Assembly. No member of the commission may hold any office in any political party or be appointed to any judicial office while serving on the commission or within one year thereafter. Existing provisions relating to temporary appointments to fill vacancies on the Court of Appeals would become obsolete and would, therefore, be repealed.

Amendment Two

The purpose and effect of this proposed amendment, which would become effective April 1, 1978, is to restructure the authority and responsibility for the administration of the Unified Court System of the State. The present Administrative Board of the Judicial Conference consisting of the Chief Judge of the Court of Appeals and the Presiding Justices of the four Appellate Divisions would be reconstituted as the Administrative Board of the Courts. The Chief Judge, with the advice and consent of such Board, would appoint a Chief Administrator of the Courts to serve at his pleasure. The Chief Administrator, on behalf of the Chief Judge, would supervise the administration and operation of the Unified Court System. The Chief Judge, after consultation with the Administrative Board of the Courts, would establish standards and administrative policies for general application throughout the State. These would be submitted to the Court of Appeals for approval and promulgation.

The Chief Administrator of the Courts would have such powers and duties as may be delegated to him by the Chief Judge and such additional powers and duties as may be provided by law. Pursuant to the proposed amendment, the Chief Administrator would make temporary assignment of judges and justices among the courts in accordance with established standards and administrative policies; with the approval of the presiding justice of the appropriate Appellate Division, he would designate justices of the Supreme Court to serve upon Appellate Terms, in counties where such Appellate Terms are held, and he would designate the place or places where such Appellate Terms would be held. He would also be authorized to exercise, together with the Administrative Board, any power possessed by the Legislature to regulate the practice and procedure in the courts, if authorized by the Legislature. Also included among the proposed amendments are provisions which will (a) repeal existing authority of the Appellate Divisions of the Supreme Court in each department to establish separate divisions of the Supreme Court and the County Court for various classes of actions and proceedings, (b) permit judges or justices to hold an office in relation to the administration of the courts and subject them to rules of conduct as may be promulgated by the Chief Administrator with the approval of the Court of Appeals, (c) subject judges of district, town, village or city courts outside the City of New York to such rules of conduct not inconsistent with law as may be promulgated by the Chief Administrator, with the approval of the Court of Appeals, (d) change from mandatory to permissive the duty of the Governor to designate additional justices to an Ap-

pellate Division when required, and (e) deny an Appellate Division the power to confer jurisdiction upon an Appellate Term to hear and determine appeals in criminal cases prosecuted by an indictment or by an information filed by a district attorney where indictment by a grand jury has been waived. The itemized estimates of the financial needs of the Judiciary which are included in the State's budget are to be approved by the Court of Appeals and certified by the Chief Judge, rather than by the Comptroller as at present, for transmittal to the Governor for inclusion in the budget with copies of such itemized estimates to be transmitted to appropriate committees of the Legislature.

Amendment Three

The purpose and effect of this proposed amendment, which would become effective April 1, 1978, is to restructure the provisions of the Constitution relating to the disciplining of justices and judges of the Unified Court System of the State. The Court on the Judiciary would be abolished and the nine-member Commission on Judicial Conduct would be reconstituted. A new eleven-member Commission would receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the Unified Court System in the manner provided by law. It would have power to determine that a judge or justice be admonished, censured or removed from office for cause including but not limited to misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct on or off the bench prejudicial to the administration of justice. It would also have power to determine that a judge or justice should be retired for mental or physical disability preventing the proper performance of his judicial duties. The judge or justice involved may either accept the Commission's determination or request a review thereof by the Court of Appeals, which may admonish, censure, remove or retire such judge or justice, impose a less or more severe sanction or impose no sanction. If review by that Court is sought, the Court would have the power to suspend such judge or justice from office until final determination of his case. A judge or justice could also be suspended if indicted or charged on an information filed by a district attorney where indictment by a grand jury has been waived. A judge or justice suspended from office by the Court of Appeals would receive his judicial salary during such period of suspension unless the Court directs otherwise, and if the Court has so directed and the suspension is thereafter terminated, the Court may direct that he be paid his salary for such period of suspension. A judge or justice who is retired by the Court of Appeals shall be considered to have retired voluntarily; a judge or justice removed by the Court of Appeals shall be ineligible to hold other judicial office. Four members of the Commission would be appointed by the Governor, one by the Temporary President of the Senate, one by the Minority Leader of the Senate, one by the Speaker of the Assembly, one by the Minority Leader of the Assembly and three by the Chief Judge of the Court of Appeals. Of the members appointed by the Governor, one shall be a member of the bar of the State but not a judge or justice, two shall not be members of the bar, justices or judges or retired justices or judges of the Unified Court System, and one shall be a judge or justice of the Unified Court System. Of the members appointed by the Chief Judge, one shall be a justice of the Appellate Division and two shall be judges or justices of courts other than the Court of Appeals or the Appellate Divisions. None of the persons to be appointed by the legislative leaders shall be justices or judges or retired justices or judges. The organization and procedure of the Commission on Judicial Conduct is to be as provided by law. The Commission may establish rules and procedures not inconsistent with law. The Legislature is empowered to provide by law for review of determinations of the Commission on Judicial Conduct with respect to justices of town and village courts by an Appellate Division of the Supreme Court. The Court on the Judiciary is granted jurisdiction to conclude any matter pending before it on the effective date of the proposed amendment, and all matters pending before the present Commission on Judicial Conduct are to be disposed of in such manner as shall be provided by law.

Appendix II

Standards and Administrative Policies
Effective April 1, 1978

Pursuant to Article VI, section 28(c), of the State Constitution, the Chief Judge of the Court of Appeals, with the approval of the Court of Appeals, promulgates the following standards and administrative policies respecting the unified court system throughout the State. These standards and policies have been developed in consultation with the Administrative Board of the Courts.

Preamble

The purpose of these standards and policies is to assign and regulate administrative authority in a complex, multi-tiered court system. The Constitution now vests in a Chief Administrator of the Courts, on behalf of the Chief Judge, responsibility for supervising the administration and operation of our courts. Heretofore, this has been the constitutional responsibility of the Appellate Divisions of the Supreme Court and the Administrative Board of the Judicial Conference. These standards and policies reflect the judgment of the Chief Judge and of the Court of Appeals that sound management of our court system requires that the Appellate Divisions, through their Presiding Justices, have a significant consultative role in management decisions which affect the trial courts in each of the diverse areas of our State. This participation of the Appellate Divisions in court administration is consistent with our judicial tradition and is important to the intelligent and effective exercise of the Chief Administrator's constitutional functions and responsibilities.

Paramount, however, is the constitutional mandate for a unified administration of the courts, within the framework of which the consultative role of the Appellate Divisions may appropriately function. The Chief Administrator should also consult with the trial judges, the Bar, and the public, either directly or through deputies, local administrative judges, and advisory committees.

1. Chief Judge and Chief Administrator; Exercise of Administrative Powers and Duties

(a) Establishment of the regular hours, terms, and parts of court, and assignments of judges and justices to them, other than temporary assignments, shall be done in consultation and agreement with the Presiding Justices of the appropriate Appellate Divisions on behalf of their respective courts; provided that if the Chief Administrator and a Presiding Justice are unable to agree, the matter shall be determined by the Chief Judge. Retired judges or justices certificated pursuant to Article VI, section 25, of the Constitution shall be subject to assignment by the Appellate Divisions pursuant to that section, in consultation with the Chief Administrator.

(b) Appointments of nonjudicial officers and employees of trial courts shall be made upon nomination of the appropriate administrative judge, supervising judge or judge of the court in which the position is to be filled, or other administrator designated by the Chief Administrator. Judges and justices having personal assistants who serve as law clerks (law secretaries) and secretaries may continue to appoint and remove them, subject to standards and administrative policies established, approved, and promulgated pursuant to Article VI, section 28(c), of the Constitution, and to the final determination of budgets pursuant to Article VI, section 29.

(c) Designation of the places where Appellate Terms shall be held, pursuant to Article VI, section 8(a), of the Constitution, shall be made in consultation with the Presiding Justices of the appropriate Appellate Divisions.

(d) Adoption of administrative rules for the efficient and orderly transaction of business in the trial courts, including but not limited to calendar practice, shall be done in consultation with the Administrative Board of the Courts or the appropriate Appellate Divisions.

(e) If the Chief Judge designates deputy chief administrators and administrative judges, he shall do so in consultation with the Presiding Justices of the appropriate Appellate Divisions on behalf of their respective courts. If designations are made by the Chief Administrator pursuant to delegated authority, they shall be made in consultation with the Presiding Justices of the appropriate Appellate Divisions on behalf of their respective courts, and shall require the approval of the Chief Judge.

(f) Designation of the Presiding Justice and Associate Justices of an Appellate Term shall require the approval of the Presiding Justice of the appropriate Appellate Division.

2. Chief Administrator of the Courts; Compensation

The salary of the Chief Administrator shall be fixed by the Chief Judge within the amount available by appropriation. He shall also be entitled to reimbursement for expenses actually and necessarily incurred by him in the performance of his duties. If a judge is appointed, he shall receive his judicial salary and such additional compensation as may be available by appropriation, and his actual and necessary expenses.

3. Existing rules

(a) All rules and standards of the Administrative Board of the Judicial Conference, except Part 33 (Rules Governing Judicial Conduct), in effect on March 31, 1978, shall be continued in effect as standards and administrative policies established, approved, and promulgated pursuant to Article VI, section 28(c), of the Constitution, until expressly superseded by new rules or standards and administrative policies. Unless a contrary construction is required, references to the Administrative Board of the Judicial Conference shall be deemed references to the Chief Judge of the Court of Appeals; references to the State Administrator and State Administrative Judge shall be deemed references to the Chief Administrator of the Courts; and references to the Appellate Divisions shall be deemed references to the Chief Administrator of the Courts.

(b) Before amending or repealing an administrative rule of an Appellate Division for the efficient and orderly transaction of business in the trial courts, including but not limited to calendar practice, that was in effect on March 31, 1978, the Chief Judge or Chief Administrator shall consult with that Appellate Division.

Appendix III

Chief Judge's Administrative Delegation
Effective April 1, 1978

Pursuant to Article VI, section 28(b), of the State Constitution, the Chief Administrator of the Courts is delegated the following powers and duties.

1. Chief Administrator of the Courts; General Powers and Duties

(a) The Chief Administrator shall supervise on behalf of the Chief Judge the administration and operation of the unified court system, except as otherwise provided in section 3 with respect to the Appellate Divisions and Appellate Terms of the Supreme Court and section 4 with respect to the Court of Appeals.

(b) In the exercise of this delegated responsibility and in accordance with the standards and administrative policies established, approved, and promulgated pursuant to Article VI, section 28(c), of the Constitution, the Chief Administrator shall:

i. Prepare the itemized estimates of the annual financial needs of the unified court system. These itemized estimates, approved by the Court of Appeals and certified by the Chief Judge, shall be transmitted by the Chief Administrator to the Governor and to the Chairmen of the Senate Finance and Judiciary Committees and the Assembly Ways and Means and Judiciary Committees not later than the first day of December.
ii. Establish the regular hours, terms, and parts of court, and assign judges and justices to them, in consultation and agreement with the Presiding Justices of the appropriate Appellate Divisions on behalf of their respective courts; provided that if the Chief Administrator and the Presiding Justices are unable to agree, the matter shall be determined by the Chief Judge. Consultation and agreement shall not be required for temporary assignments.
iii. Appoint and remove, upon nomination or recommendation of the appropriate administrative judge, supervising judge or judge of the court in which the position is to be filled or the employee works, or other administrator, all nonjudicial officers and employees, except the County Clerks, Commissioners of Jurors, nonjudicial officers and employees of the town and village courts, and personal assistants who serve as law clerks (law secretaries) and secretaries to judges and justices.
iv. Designate deputies and administrative judges in accordance with section 2. The Chief Administrator may delegate to any deputy, administrative judge, assistant, or court any administrative power or function delegated to the Chief Administrator.
v. Enforce and supervise the execution of the standards and administrative policies, established, approved, and promulgated pursuant to Article VI, section 28(c).
vi. Adopt administrative rules for the efficient and orderly transaction of business in the trial courts, including, but not limited to, calendar practice, in consultation with the Administrative Board of the Courts or the appropriate Appellate Divisions.
vii. Make rules, in consultation with the Administrative Board of the Courts, to implement Article 16 of the Judiciary Law.
viii. Establish an administrative office of the courts; appoint and remove deputies, assistants, counsel and employees as may be necessary; fix their salaries within the amounts made available by appropriation; and as may be necessary establish regional budget and personnel offices for the preparation of budgets of the courts, and the conduct of personnel transactions affecting nonjudicial officers and employees of the unified court system, located within their regions.
ix. Establish programs of education and training for judges and non-judicial personnel.
x. Appoint advisory committees as he shall require, to advise him in relation to the administration and operation of the unified court system.

xi. Supervise the administration and operation of law libraries of the unified court system.
xii. Designate law journals for the publication of court calendars, judicial orders, decisions and opinions, and notices of judicial proceedings.
xiii. Supervise the maintenance and destruction of court records.
xiv. Accept as agent of the unified court system any grant or gift for the purposes of carrying out any of his powers or duties or the functions of the unified court system, and contract on behalf of the unified court system for goods and services.
xv. Exercise all powers and perform all duties on behalf of the unified court system as a "public employer" pursuant to Article 14 of the Civil Service Law (Taylor Law) as the "chief executive officer" pursuant to that Article.
xvi. Adopt classifications and allocate positions for nonjudicial officers and employees of the unified court system, and revise them when appropriate.
xvii. Have any additional powers and perform any additional duties assigned by the Chief Judge.

2. Deputy Chief Administrators and Administrative Judges

(a) The Chief Administrator of the Courts, in consultation with the Presiding Justices of the appropriate Appellate Divisions on behalf of their respective courts, and with the approval of the Chief Judge, shall designate the following deputy chief administrators and administrative judges, who shall serve at his pleasure for a period not exceeding one year:

i. In the City of New York, a deputy chief administrator, who may be a judge, for all the trial courts; one administrative judge each for the Family Court, the Civil Court, and the Criminal Court; and one administrative judge each for the Supreme Court in Bronx, New York, and Queens Counties and the Second Judicial District.
ii. Outside the City of New York, a deputy chief administrator, who may be a judge, for all the trial courts; and an administrative judge in each judicial district, except that separate administrative judges may be designated for Nassau and Suffolk Counties. The Chief Administrator may designate an administrative judge or administrative judges for the Family Court outside the City of New York.
ii. Such other supervising judges as may be required.

(b) The Presiding Justice of an Appellate Term shall be designated by the Chief Administrator with the approval of the Presiding Justice of the appropriate Appellate Division, and shall be the administrative judge of that court.

(c) The Presiding Judge of the Court of Claims shall be the administrative judge of that court.

(d) Deputy chief administrators and administrative judges shall be responsible generally for the orderly administration of the courts within the area of their administrative responsibility, as set forth in their orders of designation.

3. Administration of Appellate Divisions and Appellate Terms

(a) The Presiding Justices and the Associate Justices of the Appellate Divisions shall administer their respective courts and the Appellate Terms of the Supreme Court in their respective departments, in accordance with the standards and administrative policies established, approved, and promulgated pursuant to Article VI, section 28(c), of the Constitution, and in their respective courts and for their respective Appellate Terms shall:

i. Establish the hours and terms of court, and assign justices to them.
ii. Appoint and remove all nonjudicial officers and employees, except personal assistants who serve as law clerks (law secretaries) and secretaries to justices of those courts.
iii. Delegate to the Presiding Justice or to any associate justice or the Clerk any administrative power or function enumerated in this section.

iv. Enforce and supervise the execution of the standards and administrative policies established, approved, and promulgated pursuant to Article VI, section 28(c).
v. Adopt administrative rules for the efficient and orderly transaction of business.

(b) The Chief Administrator's powers and duties with respect to the Appellate Divisions and Appellate Terms shall be limited to the following:

i. Preparation of the itemized estimates of the annual financial needs of the Appellate Divisions and Appellate Terms, in consultation with the respective Appellate Divisions.
ii. Enforcement and supervision of the execution of the standards and administrative policies established, approved, and promulgated pursuant to Article VI, section 28(c), relating to personnel practices and career service rules.
iii. Designation of law journals for the publication of court calendars, judicial orders, decisions and opinions, and notices of proceedings.
iv. Acceptance as agent of the Appellate Divisions and Appellate Terms of any grant or gift for the purposes of carrying out their functions, and contracting on their behalf for goods and services.
v. Exercise of all powers and performing all duties as a "public employer" pursuant to Article 14 of the Civil Service Law (Taylor Law), and as the "chief executive officer" pursuant to that Article.
vi. Adoption, and revision when appropriate, of classifications and allocations of positions for nonjudicial officers and employees of the Appellate Divisions and Appellate Terms.

(c) Supervision of the administration and operation of the following programs shall remain the responsibility of the Appellate Divisions or Presiding Justices, as now provided by statute: assignments of counsel, law guardians and guardians ad litem; the Mental Health Information Service; appointments of examiners of incompetents' accounts; and admission to the Bar, disciplining of lawyers, and regulation of the practice of law.

4. Court of Appeals

The Chief Administrator of the Courts shall adopt classifications and allocations of positions for all nonjudicial officers and employees of the Court of Appeals and revise them when necessary and appropriate, and shall have no other and additional powers and duties with respect to the administration of the Court of Appeals except as directed by the Court of Appeals.

UTAH

IMPLEMENTATION STRATEGIES APPLIED TO OBTAIN A NEW COURT SYSTEM

Thornley K. Swan

On Saturday, July 1, 1978, in the rotunda of the Utah State Capitol in Salt Lake City, the Utah Supreme Court convened a special court session. The session was called to swear in 25 former city judges and eight newly appointed judges who would serve as circuit judges of the newly established statewide court of limited jurisdiction—the circuit court. At that ceremony, the new circuit court was characterized by Governor Scott M. Matheson as a giant step forward and the most significant change in the Utah state judicial system since statehood in 1896. For the first time, Utah had a statewide misdemeanor court system with judges selected, compensated, and retained in office on the same basis as the district courts, the court of general trial jurisdiction in Utah. A review of the plans, developments, and unexpected occurrences will highlight the implementation strategies that were used during the previous two-and-a-half-year period to bring about this accomplishment.

At the conclusion of the budget session of the state legislature in February 1976, the State Judicial Council succeeded in obtaining the largest judicial salary increase ever passed by the state legislature. The council then directed its attention to a substantive judicial problem: the demonstration to newly discovered friends in the legislature that the judicial branch of state government was ready to be actively and responsively involved in improving the state judicial system.

Recognition of Needed Reform

For some time, concern had been expressed about the structure and deficiencies of the city court system, and numerous attempts had been made by the state bar and others to abolish the justice of the peace

Thornley K. Swan is the Chief Judge, Utah Judicial Council, and District Judge, 2nd Judicial District, Farmington, Utah. Judge Swan received a BS degree and JD degree from the University of Utah, Salt Lake City.

system. Such efforts proved to no avail, and the council decided that the area to be addressed was the Utah courts of limited jurisdiction.[1] A review of the numerous "studies" made in the past 20 years gave little hope for optimism. At least two major efforts aimed at complete restructuring had been completed, and three or more selective studies focusing on the limited jurisdiction courts had been undertaken. The State Judicial Council also decided that if anything were to come from further study, it would be necessary to broaden the scope of the study and to seek support from areas beyond the influences of the judicial council and the Utah State Bar Association. Careful consideration of implementation strategy was necessary even before the study was made, before the recommendations were considered, or before a plan was developed.

At this time a real "first" occurred. It was recognized that any recommendation or plan resulting from a study would have to be implemented by the state legislature, either through the proposal of constitutional amendments of the judicial article or through statutory changes within the existing judicial article. It was recognized further that any substantial change in the judicial system probably would require the legislature to provide state funding as well as substantive statutory changes. With these considerations in mind, the judicial council invited the Judiciary Committee of the House of Representatives to form a 10-member joint judicial and legislative committee to study the Utah courts of limited jurisdiction. This accomplished, the committee then obtained funds through a Law Enforcement Assistance Administration grant and contracted with the Western Regional Office of the National Center for State Courts to assist in the study.

It became clear in the beginning that if this effort were to succeed, the recommendations and resulting legislation had to be tailored carefully to fit the particular cultural, historical, and political situation in Utah; sweeping changes involving constitutional amendments such as a new judicial article or total abolition of all justice of the peace courts (which in Utah were constitutionally established) was not possible. These and other constraints, born of past failures in court reform efforts, were constant taskmasters. As the staff made its interim reports to the committee, the committee in turn gave tentative approval or rejection of the recommendations. By November 1, 1976, the report, recommendations, and proposed legislation with joint committee approval were ready for submission to the State Judicial Conference.

1. This area included the juvenile court, which in Utah comprises a separate statewide structure.

Recommendations for Change

The report recommended the establishment of a state circuit court system to replace the city court system and recommended extensive amendments to the justice of the peace courts as a companion measure. The recommendations and proposed legislation were discussed and debated during the three-day annual judicial conference, and either at the close of the conference or within a following two-week period, the plan had received the endorsement of the judges of each level of the court system—the supreme court, the district court, the juvenile court, the city court, and the justice of the peace court.

Campaign Efforts

Then came another major effort: to solicit in writing and to obtain support of the legislation from the mayors and city councils of each of the major cities and of a cross section of the smaller cities. This approach proved to be erroneous, because it was noted soon that a supportive resolution attracted little attention from the news media, while opposition to the plan would surely get headline treatment in a major regional or local newspaper. Municipal governments were quite concerned with potential loss of a previously secure source of income and loss of control over what had become virtually an area of the executive branch of municipal government. As had been anticipated, many of these elected local officials and appointed staff people were skeptical of the representations and the proposed legislation regarding their participation in the fines and forfeitures in exchange for provision by the state of certain court facilities and support personnel.

The need to attend city council and town board meetings and to visit individually with mayors, councilmen, and other city officials throughout the entire state became evident; the strategies developed by the state court administrator and deputy state court administrator were modified to obtain supportive resolutions from substantially all of the municipalities of the state. Other areas of support that were deemed essential included the Utah State Bar Association, the various county bar associations, county attorneys (especially those along the more densely populated Wasatch Front), and the Statewide Association of Prosecutors, an association that has become a central spokesman for the prosecuting arm of county and municipal government.

In November 1976, it was recognized that the support of the news media would be necessary, and between then and the time the legislature acted, every major newspaper and several television and radio stations in the state gave editorial support for the legislation on one or more occasions. Other areas of support deemed essential, and eventually obtained by formal resolution or news release to the media, included the governor, the League of Women Voters, the leading labor organizations,

the State Farm Bureau, the Utah Taxpayers Association, and the State Judicial Council advisory committee. The League of Cities and Towns withheld its support for the legislation, and its officers seemed to assume that the municipalities would oppose generally the loss of their municipal courts; it was only after supportive resolutions were adopted by Salt Lake City, Ogden, and other major cities, and endorsement was expressed by numerous smaller municipalities across the state, that the opposition from the league became neutralized.

Legislative Approval of Change

As the January session of the legislature approached, the proposed legislation was ready to be pre-filed. A good deal of time was spent selecting bipartisan sponsorship for the two bills that were introduced—one abolishing the city courts and creating a partially state-funded circuit court system with statewide jurisdiction, and a second bill providing for substantial changes in the justice of the peace system, including 10 major changes in the areas of compensation, election, appointment, discipline, statistical records and reports, training and certification, facilities, and staff and support personnel. The bills moved slowly through the senate committees. After relatively minor amendments were made, the bills were passed on third and final reading without a negative vote, and with every senator having cast an affirmative vote for the bills on one of the three readings. At this point, it was assumed this strong showing of support would constitute a mandate to the House of Representatives to act quickly and affirmatively on the bills, but this was not so. Further amendments were offered in the House Judicial Committee, and substantial opposition to the Circuit Court Bill, in particular, began to emerge. The old clichés of "local control" and "loss of revenue" were heard. The bills finally reached the floor of the house at 9 o'clock on the next-to-last day of the 60-day session. The Justice of the Peace Bill was passed with little opposition, and then all of the amendments that had been defeated in committee were brought to the floor of the house, mostly in an effort to kill the Circuit Court Bill. Only through a compromise agreement made with the leadership of the house to delay the effective date of the bill to July 1978—and thus defer the funding of the new court system—was enough support gained to obtain passage of the bill, with a 38 to 36 vote, at the last minute.

The agreement to delay the effective date of the Circuit Court Act to July 1, 1978, proved to be a distinct advantage, because the time was in fact needed to develop the necessary procedures for moving the 25 city courts into the new state court system and for establishing the eight newly created circuit courts.

The legislature provided no additional resources to implement the new system, and implementation had to be accomplished by the existing court

administrator's office under the direction of the judicial council. A written plan was adopted, a time schedule was established and adhered to, and an individual impact statement was drawn up for every jurisdiction affected by the new court.

The implementation continued under the direction of the staff of the court administrator's office. Staff visited each county, city, and town affected by the act, and discussed with court personnel and other municipal officials the impact statement showing the effect of the act for that particular county or municipality in the areas of personnel, finance, and court facilities. These visits started in January 1978 before the budget session of the legislature, so that funding of the court system met with little opposition. Follow-up visits continued through July 1, the effective date of the act, and the transition from city court to circuit court was completed without significant incident.

As a spin-off benefit, the judicial branch of state government, speaking through its judicial council and acting through the state court administrator's office, established a new level of credibility with the state legislature, news media, and the general public. A recent poll conducted by Wasatch Opinion Research Corporation for the office of the state court administrator and released at the Annual Judicial Conference held in September 1979 found that 66.2 percent of the people contacted believe that the courts in Utah are doing a good job, with only about two out of 10 respondents (22.5%) indicating that the courts are not doing a good job. (The remaining respondents—11.3%—had no opinion.)

Conclusion

From a review of the implementation strategies discussed at the Williamsburg II Conference, it appears that each suggested strategy was used by the National Center for State Courts and the state court administrator's office to a greater or lesser degree. To say which was the most effective or the most needed to accomplish the result would be difficult, because the loss of only one vote in the House of Representatives would have meant the loss of the circuit court system. We would, in any event, suggest that without the help of the National Center for State Courts, and the detailed follow-through of the entire staff of the office of the state court administrator, the circuit court project would still be in the study stage instead of an accomplished fact.

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WASHINGTON

Washington State Court Reform

Phillip B. Winberry

Efforts toward judicial reform are a long-standing tradition in the State of Washington traceable to the creation of the Washington Judicial Council by statute in 1925. Creation of the Judicial Council was seen as a means to strengthen the judiciary and make judges more accountable to the public. It is also apparent from reading early Judicial Council publications that supreme court caseload congestion was of great concern to Washington legislators. Concurrent with the creation of the Judicial Council, the legislature empowered the supreme court to promulgate rules to govern the practice and procedure of the Washington state courts. The statute included language allowing the supreme court to supersede legislative enactments in the procedural area.

In 1929, the Second Biennial Report of the Judicial Council focused on possible methods for relieving supreme court caseload congestion. The study recommended the creation of an intermediate appellate court as a solution. This recommendation was based on the success of intermediate appellate courts in several jurisdictions including England and the states of California, Georgia, Illinois, Indiana, Louisiana, Missouri, New York, Ohio, Oklahoma, and Tennessee. Tentative legislation was proposed but not introduced.

Minimal actions occurred during the next six years, except for the integration of the Washington State Bar Association in 1933, a move actively supported by the Judicial Council. In 1935, the Judicial Council proposed a constitutional amendment authorizing a majority of the supreme court to call upon superior court judges for assistance during emergencies. The legislature failed to act, however, as it would on identical requests during the next four successive biennial sessions. The

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Phillip B. Winberry was State Court Administrator of Washington. He now serves as Director of the Vera Institute of Justice in London, an organization devoted to solving problems of court delay in England. He received a BA degree from California State University and a JD degree from the University of Washington.

early 1940's saw legislative attention turn to other subjects, but by 1949 the Judicial Council was again formally promoting a constitutional amendment to provide temporary assistance to the supreme court to deal with crisis situations. It was not until 1961 that the legislature finally passed the amendment, which was subsequently approved by the voters.

In the early 1950's, another aspect of judicial "reform" came to the forefront—that of judicial salaries. Reports of the Washington State Bar Association and the Judicial Council focused on that issue, and the legislature finally acted in 1957, increasing the salary of superior court judges from $12,500 to $15,000 and of the supreme court justices from $15,000 to $20,000. Concurrent with the judicial salary increase, the legislature created the office of administrator for the courts. That office, a symbolic gesture to improve judicial administration and performance, was not to play a major role in judicial reform for the first 12 to 15 years of its existence. In fact, until 1968, its staff consisted of the administrator and one secretary.

By the late 1950's, attention focused on the state's collection of limited jurisdiction courts. Washington, like most states strongly in need of reform, had operated since statehood with justice of the peace courts, each of which functioned and supported a judge and staff out of fines and forfeitures. In 1961, with encouragement from the bar association and the judiciary, the legislature created a state system of district courts to be funded by the counties, thus removing the stigma of "fee justice."

The 1960's also saw major procedural reforms designed to enhance both the administration of justice and the administration of the state courts at the trial and appellate levels. Legislative enactments included adoption of the Uniform Commercial Code (1965) and simplified probate procedures (1967). The supreme court exercised its rulemaking powers by passing new rules of civil procedure in 1967 patterned after the federal rules and juvenile court rules in 1969 in response to *In re Gault*. The momentum for procedural reform continued into the 1970's with the legislature enacting grand jury reforms (1971), a criminal code (1975), and a new juvenile code (1977). The supreme court was no less active, and responded with new rules of criminal procedure (1973) that implemented a large majority of the ABA Standards for Criminal Justice, new rules for mental health procedures (1974), new rules of appellate procedure (1976), new rules of juvenile procedure to complement the substantive reforms of the legislature (1978), and new rules of evidence patterned after the federal model (1978).

Such continuing activity by the supreme court shows there has been a climate for change within the judiciary of Washington. Why then has every effort at constitutional reform of the state's basic judicial structure ended in failure? And perhaps more important today, is it necessary or even realistic to expect constitutional change to occur?

The Need for Judicial Reform

The answer to that question may lie in the fact that no one can assert realistically that there is a true crisis in Washington's court system. Still, discussion of the need for comprehensive judicial reform has been occurring for many years. The pressure for action gained momentum in the early 1960's. At the same time—and perhaps adding impetus to the judicial activity—serious discussions took place concerning the need for comprehensive revision of the state constitution. In May 1965, the legislature, by resolution, created a constitutional advisory council to analyze Washington's constitution, to make appropriate recommendations for change, and, if appropriate, to set the stage for calling a constitutional convention.

The state's judicial community and the bar association collaborated in late 1964 and created a "Joint Committee for the Study of a Revision of Article IV" (the Judicial Article). The 20-member committee adopted as its charge the investigation of the need for changes in six major areas: Selection and Tenure of Judges; Judicial Salaries, Retirement, Discipline, and Removal; Court Structure, Organization, and Administration (including judicial redistricting); Intermediate Appellate Courts; Courts of Limited Jurisdiction; and other necessary changes in Article 4. The state court administrator served as an ex-officio member of the committee. Concurrently, the state Judicial Council began a similar study with some overlap in committee memberships. Unfortunately, the two groups did not work closely together.

The philosophy of the bench-bar group is perhaps best summarized in the following excerpt from the first draft effort produced by the committee:

> There is certainly good reason to feel that much could be accomplished by some rather conservative amendments to the present Judicial Article. This may be the better way to deal with the problems involved. Our present system has worked quite well over the years and may work for years to come with some moderate changes.
>
> There may be reasons to be cautious in the matter. The experiences with ultra-modern court systems have not been uniformly favorable. Also, it should be kept in mind that our court system was considered efficient and modern until very recent years. Our system cannot be fairly compared to the complex and antiquated systems in some of the older states, of the East and South.

With that caution, the committee recommended upgrading the courts of limited jurisdiction, reducing the work load of superior court judges by removing the constitutional limit on the number of commissioners, encouraging the use of modern management methods to streamline the

work of the trial courts, and eliminating the constitutional prohibition against increases in judicial salaries during a term of office.

The Joint Committee recommendations surprisingly were contained in three reports: one by the superior court judges, a dissenting report by members of the supreme court, and a report by representatives of the bar. The divisive issue concerned whether the supreme court or the individual trial court judges would have responsibility for administering the courts. This issue has dominated every discussion of judicial reform in the state to the present day. The specific issue around which the discussion centered was the extent and scope of the supreme court's rulemaking power. The main area of agreement between the groups was the need for the creation of an intermediate court of appeals.

The need for an intermediate appellate court kept the "reform" efforts alive. In early 1966, the bar association had taken the lead on this issue, with a view toward introducing appropriate legislation during the 1967 legislative session. Working throughout the year, by late 1966 the committee was prepared to submit its recommendations to the legislature.

First Citizens' Conference

Another activity occurred during late 1966 that was to have the most significant effect on judicial reform in the state to date—the first Citizens' Conference on Washington Courts. On September 14, 1966, an ad hoc meeting of persons interested in judicial reform took place in Seattle. The purpose of the meeting was to lay the groundwork for a conference of lay citizens and professional, business, and labor leaders to explore current and future needs of the state judicial system. With the assistance of the American Judicature Society, a conference, attended by almost 200 persons, was held November 10–12, 1966. The purpose of the conference was set forth in the meeting announcement:

> To consider the present judicial system of the State of Washington, to examine the problems that system currently faces and explore alternative solutions to those problems. It is hoped that the conference will produce a genuine citizens' consensus in pointing to such changes as may be needed to insure that the administration of justice in Washington is as speedy, as effective and as fair as possible. Specifically, the conference will focus on questions such as judicial selection and tenure, court organization and administration, courts of limited jurisdiction and the judicial appellate process.

At the conclusion of the conference, those attending approved a consensus statement to chart the course for judicial reform efforts within the state. While complimenting the dedication of the state's judges, the

statement called for the correction of the "serious weakness which reduces opportunities for the best judicial services." Among the needs of the system identified in the consensus were statewide administration and management of the entire judicial system, establishment of a court of appeals, upgrading courts of limited jurisdiction by increasing their jurisdiction and making them courts of record, merit selection and retention of judges, and a means for discipline or removal of judges when appropriate.

The stage was set for the 1967 session of the legislature. On the one hand, the legislature could enact comprehensive reform as recommended by the citizens' committee and the Judicial Council; alternatively, it could take the more cautious approach proposed by the bar association and submit the creation of a court of appeals to the voters for approval.

At the close of the 1967 legislative session, it was apparent that the years of effort had a marked impact. While total system reform was not approved, several actions were taken that held hope for the future. Among these steps were passage of Senate Joint Resolution (SJR) 6, a constitutional amendment creating a court of appeals; passage of House Joint Resolution (HJR) 13 that allowed judges' salaries to be increased during their term of office; passage of legislation that for the first time funded staff for both the administrator of the courts and the Judicial Council; salary raises for judges; and the creation of additional superior court judgeships.

In September 1967, the Citizens' Committee on Washington Courts was formally incorporated,

> to conduct, assist and otherwise encourage nonpartisan study and research in the field of (a) the administration of justice, (b) court reorganization, and (c) the proper and most effective methods of judicial selection, tenure, removal, retirement, compensation and discipline, and to publish, publicize and disseminate by any and all appropriate methods, the results of the studies . . . .

The committee adopted as its immediate goal the passage of the constitutional amendment creating the court of appeals. Its long-term goal was still the promotion of court reform in general.

The efforts of judges, lawyers, and citizens were successful, and both constitutional amendments were approved by the voters in the fall of 1968. Attention then shifted to the enactment of implementing legislation, so that the new court of appeals could commence operation in September 1969. The legislation was passed, though not without some controversy over division lines and the method of initial selection and appointment of the judges on the court. In the end, merit selection with the assistance of a nominating commission was rejected, and the old

system for election of judges was retained. The court was able to begin its operation on schedule.

Following the successful launching of the court of appeals, the impetus for judicial reform seemed to die, at least temporarily. Nevertheless, most of the interested groups returned to the issue from time to time in sufficient depth to keep it alive.

New Attempts for Judicial Reform

In 1971, four separate judicial reform proposals of a comprehensive nature were made to the legislature. They included proposals by the Judicial Council, the citizens' committee, the bar association, and the Governor's Committee on Constitutional Revision. The issues addressed by all of the proposals included discipline and removal of judges, merit selection and retention, trial court unification, statewide court administration, upgrading the courts of limited jurisdiction, and court financing. The philosophical approach of each group differed. On some issues the differences were major.

A new impediment to overall comprehensive judicial reform was raised at this time. It was alleged that the state constitution could not be amended in a wholesale fashion but rather had to be amended section by section. This argument was seized upon by the opponents of reform (primarily superior court judges). With so much controversy the legislature did not hold hearings on the question of basic reforms. With the adjournment of the legislature in June 1971, judicial reform in Washington seemed to be dead. Such was not the case.

Late in 1971 a group of interested persons representing the Citizens' Committee, the state bar association, the supreme court, the court of appeals, the superior court, the district court, the Judicial Council, the office of administrator for the courts, and the American Judicature Society met in Seattle to discuss reviving the judicial reform effort. Specifically the question posed was this: "What should be done . . . in regard to the adoption of a new and modern Judicial Article for Washington?" At the conclusion of the meeting, it was determined that renewed efforts should be made and that more active legislative involvement was a necessity. Accordingly, a two-pronged effort was devised: first, to convince the legislature to turn its attention to the need for judicial reform; and, second, to bring about a revitalization and renewal of a broad-based citizens' effort to support reform.

On the legislative front, the assistance of the chairman of the Senate Judiciary Committee was obtained. Several informal informational hearings were held during the winter and spring of 1972. A clear case was made for judicial reform—particularly in the areas of statewide administration; court financing; and judicial selection, discipline, and removal. Commitments were received from key legislators to encourage

passage, during the 1973 legislative session, of a new judicial article encompassing those and other needed reforms.

The Second Citizens' Conference

On the citizens' front, LEAA funding was received through the state planning agency to reconvene the citizens' committee for a second education program patterned after the 1966 conference. The second conference would draw upon more recent successful national judicial reform efforts.

Thus, on June 15, 1972, the Second Citizens' Conference on Washington Courts was convened. At the conclusion of the conference a new consensus statement of goals was published by the committee. Among other things, the citizens made the following demands:

1. More and better information about the courts should be provided, so that the public could judge the adequacy of various proposals to reform the courts;
2. Citizen groups should strive for adoption of the "best system which can be devised," and "this objective should not be weakened to accommodate potential obstacles or the partisan position of any specific group professionally engaged in the judicial system;"
3. Trial courts should operate more rapidly, more efficiently, and provide more equitable justice;
4. Courts should be administered as part of one statewide system;
5. Remaining "fee-justice" courts should be abolished;
6. All judges should be lawyers, and all courts should be courts of record;
7. Courts should not be used to produce revenue for units of local government;
8. All courts should be unified under one central administrative authority (such as the chief justice), whose tenure in office should be extended and strengthened;
9. The entire cost of operating all courts should be borne by the state;
10. The courts should be encouraged to utilize modern technological advancements including computers;
11. Judges should be selected for office on the basis of merit and periodically subjected to the scrutiny of the electorate at uncontested elections; and
12. Appropriate judicial discipline and removal procedures should be adopted.

With such an extensive program, it was imperative that broader public support be enlisted. To that end, a series of 10 regional meetings was held in November 1972. It was estimated that more than 1,000 citizens at-

tended and were "educated" about the need for judicial reform in Washington.

Constitutional Amendment

On February 1, 1973, the extensive efforts of the previous five years culminated in the introduction of a proposed constitutional amendment. The amendment provided a flexible modern judicial article that would permit the continued improvement of court structure and procedures by future legislation or court rule. The proposal, introduced in the state senate as SJR 113, had eight major provisions:

1. A structurally unified court system to permit uniform statewide administration of all courts and, ultimately, the establishment of a single-level trial court;
2. A time limit for the filing of supreme court decisions;
3. The establishment of all courts as constitutional courts, with clearer definitions of jurisdiction but with sufficient flexibility to allow future change by statute or court rule;
4. The reassignment of judges both vertically and horizontally within the system;
5. The screening by commissions to review qualifications of lawyers who wished to be judges and to make recommendations to the governor when he was filling vacancies. Following appointment a judge would be required to stand for election on his record. Judicial terms would also be lengthened;
6. A discipline and removal commission to hear and act on complaints against judges;
7. A longer term for the chief justice and assurance that the justice chosen was the best possible administrator available; and
8. Delegation of responsibility for managing the entire court system to the supreme court.

The euphoria over placing a comprehensive proposal that had broad support before the legislature was short-lived. A hearing was held on March 8, 1973, before the Senate Judiciary Committee. Several interested groups advanced their positions on comprehensive judicial reform. While none actually opposed the total article, their collective views represented opposition to major portions of the proposal.

Members of the supreme court, while expressing support for most concepts, suggested that the proposed terms of office should be lengthened by at least two additional years, and that no judge should ever have to face a contested election.

The president of the State Labor Council, an active participant in discussions since the early 1960's, testified to organized labor's general support for an improved judicial system. He then pointed out areas that

would have to be changed before labor could support the specific proposal under consideration. First, judges must continue to be elected in nonpartisan elections, and the terms of office should not be lengthened. Second, the language should be tightened to ensure that the supreme court could not avoid important matters by transferring them to the court of appeals. He strongly vouched for labor's support of unified statewide administration in all Washington courts.

Representatives of the Washington State Bar Association appeared to express their general support for the proposal but stressed concern over who should administer the court system. It was the bar's position that the supreme court, lacking both the time and the professional expertise, was not qualified to manage a statewide system. The bar proposed as an alternative that responsibility for administration of the courts be placed with an independent commission composed of laymen, judges, and lawyers, with lawyers comprising a majority of the membership.

Superior court judges generally opposed the pending legislation and suggested that the jurisdiction of all courts be explicitly described and that the possibility of a single-level trial court be eliminated. These judges also argued that all details of how the courts were to be administered should be spelled out in a way that left control with the local judge or judges, that funding should continue to be a local responsibility, and that terms of office should be lengthened.

Members of the Senate committees expressed concern that passage of the article would create a financial drain on the state and that the supreme court with its "inherent power" could "raid" the state treasury.

Others also expressed their views. District and municipal court judges called for the immediate establishment of a single-level trial court and for state funding of all courts. Law enforcement representatives were opposed to any language that would permit regionalization of courts and state funding, because they were uncertain as to where officers would make citations returnable. City and county officials also appeared with questions about who might get the court revenues if the state were to control the system.

Following the hearing and intensive follow-up efforts, it was obvious that the proposal was in trouble, and that more work remained to be done. Subsequent hearings showed that there was little sentiment within the legislature to pass a comprehensive change without more substantial agreement among the "competing interests."

At the close of the legislative session, the chairman of the Senate Judiciary Committee called upon all parties to reach an acceptable compromise. Discussions continued between representatives of the Citizens' Committee, the supreme court, the court of appeals, the superior and district courts, the Washington State Bar Association, the Judicial Council, organized labor, the League of Women Voters, and

others. These discussions resulted in the introduction during the 1974 special legislative session of a bill that was perhaps too much of a compromise. Hearings were held on the proposal, but no real effort was made to obtain passage. All parties agreed, however, that after so many failures, a major effort in 1975 might result in success.

On January 14, 1975, SJR 101 was introduced. This time the supporters of judicial reform were not to be denied, as they mounted an effective and ultimately successful campaign.

The Third Citizens' Conference

The first step was the assembling of more than 200 persons at a Third Citizens' Conference on Washington Courts in Olympia on February 6, 1975. Again, the citizens' group called for comprehensive reform. At the conclusion of the conference, hopes were high for immediate action, but it was to be several months, many hearings, and substantial compromises before the legislature would approve a proposal for submission to the people. Finally, however, on May 23, 1975, final approval was given to SJR 101, and the years of effort seemed to be rewarded. In the optimism prevailing at the time of passage, everyone assumed that the work was done. Once again, appearances proved deceiving.

The chairman of the Senate Judiciary Committee recognized that if the judicial article were passed by the people, the 1976 legislative session would have to pass implementing legislation. Therefore, he created a task force to advise the legislature. All court levels were represented on the task force, as were legislators and representatives of cities, counties, bar associations, the media, League of Women Voters, labor and the business community, and the Citizens' Committee.

While the task force was being organized, it was becoming apparent that there would be substantial opposition to the proposed constitutional changes. Specifically, the Superior Court Judges Association seemed to be opposed. On July 11, 1975, that association published its "Analysis and Evaluation of the Proposed Judicial Article—SJR 101." Their major conclusion was that the proposed judicial reform placed too much power in the hands of the supreme court. In addition, the analysis questioned whether the method of submitting the article to the people was a violation of Article XXIII, Section I, of the state constitution, which states:

> . . . that if more than one amendment is submitted they shall be submitted in such a manner that the people may vote for or against such amendments separately.

The judges' analysis correctly pointed out that courts of several states had considered similar issues, and that their resolutions had varied. The judges suggested that Washington's supreme court likely would hold the

article in violation of the single amendment proviso, citing as support *Moore vs. Shanahan,* 486 P.2d 507 (Kansas, 1971), a case in which the Kansas Supreme Court held a similar constitutional amendment invalid. No one stepped forward to respond to the superior court judges' analysis. The state court administrator, who might have done so, was prohibited by the supreme court to act in support of SJR 101, because of a suit filed in early July challenging the constitutionality of the method of submission. The Citizens' Committee, Washington State Bar Association, and others who might have responded failed to do so, reasoning that it wasn't necessary and that to do so would give opponents a larger forum in which to oppose passage. The damage, however, had been done.

On September 9, 1975, the Superior Court Judges Association formally voted 62-9 to oppose the judicial article. The association cited five reasons for its action, expressing the belief that the article would have these consequences:

1. Weaken the state's judicial system;
2. Violate the doctrine of separation of powers;
3. Impair the fiscal and administrative stability of the courts;
4. Surrender certain basic constitutional safeguards; and
5. Downgrade the judicial profession.

The Citizens' Committee countered immediately with a press release denying the contentions of the superior court judges and pointing out the merits of the proposed article, which included the following:

1. The creation of a unified court system with responsibility in the supreme court to administer and manage all courts;
2. The upgrading of all courts of limited jurisdiction;
3. The ultimate elimination of nonlawyer judges;
4. An improved method of choosing a chief justice to ensure that the position was held by a person with administrative and management abilities;
5. The creation of a Judicial Qualifications Commission, which included lay members, to provide a procedure to discipline or remove errant, inefficient, or arbitrary justices or judges;
6. More flexible jurisdictional provisions;
7. Better methods to allocate court work loads between levels and locations of courts; and
8. The potential for a better-funded court system.

The issues were joined, but the campaign still remained low-key. Neither side made a serious effort or spent money in support of its position. Individual members of the citizens' group promoted the proposal, as did the League of Women Voters. Labor leaders and the

Grand Master of the State Grange sent letters of support to their membership. All major newspapers in western Washington editorialized in favor of the proposal, but gave it little other coverage. The governor issued a statement urging passage. Superior court judges were quiet but not inactive.

In September, the state bar elected a new president for a one-year term. The previous president, a Seattle resident, was a supporter of judicial reform and had actively urged legislative passage of the article. The new president, a resident of eastern Washington, had on occasion been identified as an opponent of comprehensive change in the judicial system. Thus, it came as no surprise when, on October 16, 1975, the Board of Governors of the Washington State Bar Association reversed its previous support and formally voted to oppose SJR 101. They cited the arguments first raised by the Superior Court Judges Association as support for their position. After that vote, several local bar associations campaigned against the proposal, with those in Spokane and Yakima counties placing newspaper ads opposing the article because it "violated the independence of the judiciary." Most major media in eastern Washington voiced opposition to the proposal. It was too late for supporters to begin a counteroffensive. Thus, the majority of voters went to the polls on November 3 with little to base their vote on except newspaper editorials and what they read in the state voters' pamphlet.

Washington Citizens Vote

The ballot in 1975 was crowded. Joining the judicial article were a death penalty bill, a corporate income tax measure, a measure to provide public aid to private schools, a bill clarifying how U.S. Senate vacancies should be filled, and a measure to allow legislators' compensation to be increased during their terms of office. The prevalent vote on all the issues was *no*, and thus the judicial article was defeated. The official vote was 408,832 yes, 427,631 no—with negative responses in 32 of the 39 counties. (The seven voting in favor were all in western Washington.)

Washington is one of the few states without an income tax on individuals or businesses. Initiative 314 would have changed that—at least with respect to corporations. More than a million dollars was spent on the 314 campaign, which ultimately was defeated by a 2-1 margin. The negative mood engendered by the 314 campaign, as previously mentioned, carried over to the other ballot issues, all but two of which (the death penalty issue and the judicial article) lost by one- to two-hundred thousand votes.

Even if there had been concern about the fate of the article's passage in 1975, it would have been difficult to obtain financial support for an effective campaign because of the presence on the ballot of Initiative 314. Financial records showed that less than $1,000 had been spent in support

of passage of the article. Hindsight revealed that supporters obviously had been overly optimistic. Everyone had assumed that the people would endorse judicial reform as good government and vote in favor of the judicial article.

Renewed Reform Efforts

Supporters of judicial reform concluded that, because the article failed by fewer than 20,000 votes under negative circumstances, the next election would certainly bring success.

The Judicial Article Task Force created in July to draft and propose implementing statutes met in late November to consider its future. At that meeting, the chairman of the Senate Judiciary Committee made it clear that he intended to make at least one more effort to submit the issue to the people for a vote. The state court administrator advised the group that a $64,550 LEAA grant was available and could be used to provide staff for the task force. Discussion showed that most members would be more comfortable if the staff work were provided by an outside consultant. Such an arrangement would provide an independent resource not previously identified with the state's judicial reform efforts and give task force proposals more credibility.

Such an arrangement was acceptable to the state court administrator. On January 6, 1976, the administrative office released a request for a proposal to provide staff assistance in developing a new judicial article and accompanying implementing legislation. Responses were received from several national organizations; the Western Regional Office of the National Center for State Courts was selected by a screening committee of the task force after a rigorous and exhaustive evaluation of all proposals.

At one of its early meetings, the task force agreed that, if at all possible, it should attempt to promote comprehensive judicial reform. The superior court representatives demurred, citing again their concerns that submission of a "total" package violated the state constitution.

In dealing with the question of "total" judicial reform, the task force considered several issues involving the basic structure, composition, and management of the judiciary. Most of the questions had been discussed thoroughly on earlier occasions and included by subject area:

1. *Appellate Courts*
   a. Is there a need to alter the two-level appellate court structure?
   b. How should the chief justice be selected?
   c. What size should the supreme court be—five, seven, or nine justices?
   d. How should appellate jurisdiction be divided between the two appellate courts?

e. Should appellate review be eliminated in cases where the amount in controversy is not substantial?
f. Must all appellate decisions be given in writing?

2. *Trial Courts*
   a. Should there be only one trial court, or should there be a trial court of general jurisdiction and one or more of limited jurisdiction?
   b. If more than one trial court level were retained, should the court of limited jurisdiction have any exclusive jurisdiction, and, if so, how much?
   c. Should all trial courts be courts of record? If not, how should the question of trial *de novo* be handled?
   d. Should the two levels of court have different administrative structures?

3. *Judges*
   a. Should judges continue to be elected, or should some method of merit selection and retention be substituted for the elective process?
   b. If the elective process were continued, should the elections be contested? Partisan or non-partisan?
   c. Should the method of choosing appellate judges be different from that of selecting trial court judges?
   d. What qualifications for office should a judge possess? Should all judges be attorneys?
   e. How long should a judge's term of office be? Should the length of term vary according to level of court?
   f. Should there be a mandatory retirement age for judges?
   g. How should judges' salaries be set?

4. *Discipline and Removal of Judges*
   a. What should constitute grounds for disciplining a judge?
   b. How should the disciplinary process work?
   c. Should there be an independent judicial discipline commission to hear complaints?
   d. What role should the supreme court play in the disciplinary process?
   e. Who should serve on the disciplinary commission, and how should its members be chosen?
   f. Should judges be removed from the impeachment article of the state constitution if a discipline section were included in the judicial article?
   g. Is a judge subject to the disciplinary process entitled to due process?

   h. What are the effects of disciplinary removal from office on retirement rights?
   i. What type of conduct makes a judge subject to judicial discipline?

5. *Court Administration*
   a Should the judicial system be administratively unified with the supreme court having overall administrative responsibility?
   b. Should the trial courts have input into the supreme court's administrative decision process—should a committee of local judges be empowered to advise and assist the supreme court?
   c. Should the trial courts be regionalized for administrative purposes?
   d. Should there be one administrative system for all trial courts?
   e. How should nonjudicial personnel be selected?
   f. Should local variations in forms and procedures be permitted?
   g. Who should make temporary assignments of judges?

6. *Court Financing*
   a. Should the state assume responsibility for funding the entire court system?
   b. How should court fees be handled?

Between April and November 1976, the Judicial Article Task Force met nine times in all-day sessions to deal with the issues recited above and others. In addition, a statutory (implementing legislation) subcommittee met several times to refine necessary statutory language to accompany a comprehensive article. The standards by which the task force determined which provisions should be in the constitution (as opposed to statute or court rule) were simple but illuminating:

1. A state constitution should contain only statements of fundamental law;
2. A judicial article should be brief and concise, embodying only those provisions essential to guarantee a sound, fundamental, and efficient judicial system; and
3. Implementing details should be left to the legislature or the supreme court through its rule-making power to assure a system flexible enough to meet increasingly complex judicial problems.

On November 19, 1976, the task force met to consider its work product and approved a draft constitutional article and supporting legislation for introduction during the 1977 session of the legislature. In early January 1977, a proposed constitutional amendment was introduced as SJR 104. This bill was the most comprehensive piece of

judicial reform ever introduced in the state and included many major changes:

1. *Court Structure*
   a. The judicial system would be composed of four courts, including a supreme court, court of appeals, superior court, and district court.
   b. All courts would be courts of record except for the limited jurisdiction court that could be made a court of record only by statute.
   c. The superior court was given original jurisdiction over all cases unless otherwise prescribed by statute.
   d. The jurisdiction of the district court was to be prescribed by statute.
   e. No other trial courts could be created by statute nor, by implication, could the legislature consolidate the trial courts.
   f. The supreme court had jurisdiction over any court decision, but original jurisdiction only to issue writs of mandamus or quo warranto against state officials holding elective office.
   g. The jurisdiction of the court of appeals was prescribed by statute or supreme court rule authorized by statute.

2. *Judges*
   a. The number of supreme court justices was set at no fewer than five nor more than nine.
   b. The number of court of appeals, superior court, and district court judges would be set by statute.
   c. Judges would be elected in non-partisan elections.
   d. The term of office for all judges would be six years.
   e. Judicial salaries and other compensations would be set by statute.
   f. All judges would be required to be attorneys.
   g. No mandatory retirement age was set.
   h. All judicial vacancies would be filled by the governor.

3. *Discipline and Removal*
   a. Judges could be censured, suspended, or removed for violating a rule of judicial conduct adopted by the supreme court.
   b. Judges could be involuntarily retired for a disability that was permanent or likely to become permanent, and that seriously interfered with the performance of judicial duties.
   c. A judicial qualifications commission was created to hear complaints against judges and to make recommendations to the supreme court on the discipline and removal or involuntary retirement of judges. The seven-member commission was composed of three judges, two attorneys, and two private citizens.
   d. The supreme court could take disciplinary action only after consideration of recommendations of the judicial qualifications commission.

4. *Court Administration*
   a. The supreme court was responsible for administration of all courts. It could adopt guidelines governing the administration of the trial courts after consultation with an administrative council composed of representatives of each trial court region and level. Each region could in turn adopt local administrative rules not in conflict with statewide guidelines.
   b. The chief justice would be selected by a majority vote of the supreme court justices and would serve at their pleasure.
   c. The supreme court could adopt rules of procedure for all courts. Each region could adopt procedural rules not in conflict with supreme court rules.
   d. The supreme court could employ personnel to assist in its administrative functions and could set statewide personnel standards.

5. *Court Financing*
   No reference was made to the method of funding the courts. By implication, this decision was left to the legislature.

Preliminary hearings were held to familiarize legislators with the contents of SJR 104. On February 16, 1977, the Senate and House Judiciary Committees met jointly. The regional director of the National Center for State Courts' Western Regional Office outlined the proposal for the committees, noted where compromises in language and content had been made, and identified the persons who were involved in developing the proposal. Presentations in support of passage were made by most groups represented on the task force, including the Citizens' Committee, labor, the Washington State Bar Association, and the League of Women Voters.

Many superior court judges attended the meeting. Their position was presented by the president of their association.

> The Association reaffirms its desire to assist in the improvement of the administration of justice in the state. However, mere reform itself is not necessarily better, but we will support revision of our constitution to the extent that such revisions meet the following criteria:
>
> a. Revisions should be in support of and not in limitation of the

doctrine of separation of powers and the independence of the judiciary.

b. Administration of the trial courts, including the handling of caseflow, should be immediately responsive to local needs and conditions. There must be no uncertainty as to source, continuity, or sufficiency of financing the trial court operation.

The superior court representatives pointed out that they did not believe that SJR 104 met their criteria; they reiterated their concern about the constitutionality of presenting a comprehensive proposal to the people. As an alternative, they presented seven separate amendments that they would be willing to support. Their proposals covered the following subjects:

1. Creation of a discipline and removal commission;
2. Reorganization of the trial courts for administrative purposes, with at least one judge for each county. The supreme court would set administrative guidelines under which the regions would operate;
3. An increase in civil jurisdiction of the district courts;
4. Elimination of *de novo* appeals;
5. Removal of the limitation of three superior court commissioners per county;
6. Increase of all judicial terms by two years; and
7. Selection of the chief justice by members of the supreme court to serve at their pleasure.

The Senate Judiciary Committee moved swiftly and passed SJR 104 for full Senate action. The Senate, before the final vote, added amendments that created a possibility that vacancies on the district court could be filled by a process different from that used for the other courts, that the elected county clerk by virtue of office would be clerk of the superior court, and that the legislature would provide methods for funding the operation of the court to the extent it deemed necessary.

The vote for final passage, taken on March 29, 1977, was 30 yes—17 no, three votes short of the two-thirds vote necessary for passage of a constitutional amendment. A motion was immediately made for reconsideration of the bill. It was to retain this status for almost a month.

By late April, it was apparent that the remaining three votes were not to be found, but that the Senate would support a scaled-down proposal, which was actually two separate proposals. The first dealt with the discipline and removal of judges as a substitute for SJR 104; the second proposal, SJR 113, increased the civil jurisdiction of district courts.

On May 2, 1977, the House Judiciary Committee considered the scaled-down version of SJR 104. By a vote of six to four, the committee

restored the original comprehensive proposal of the task force but amended the section on administration to give the supreme court complete control over the administrative practices of all courts. The amendment was opposed, to no avail, by the Superio Court Judges Association.

Procedural jockeying sent the matter to the House Constitutions Committee, where two additional amendments were approved. The first subjected the judiciary and the Washington State Bar Association to audit by the state auditor, and the second reduced the term of office of appellate judges from six to four years.

The amended proposal was then sent to the House Rules Committee, where it died after opposition from the court leadership. The legislative response was to pass SJR 113, raising the jurisdiction of district courts to cases involving $3,000 or such higher amount as was set by the legislature. This proposal was approved overwhelmingly by the voters in the fall of 1977.

The legislature did not meet in 1978, and the 1979 session closed without substantive activity regarding judicial reform even on such single-issue proposals as discipline and removal (introduced in 1979 as SJR 116). Prospects in 1980, however, look brighter. A discipline and removal proposal, HJR 37, has received broad-based support. In addition, legislation that would allow district courts to be made courts of record by supreme court rule has been introduced, and no opposition to its passage has been expressed.

In view of this recent flurry of activity, it appears that piecemeal reform during the next several years might be successful. Areas still exist in Washington's judicial system that warrant consideration for possible change. Implementation of necessary change is a challenge that faces Washington's judicial leadership as it strives to create a judicial system capable of responding to society's needs in the 21st century.

Council of State Court Representatives

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Chief Justice, Supreme Court

Alaska
Roger G. Connor
Justice, Supreme Court

Arizona
James D. Cameron
Justice, Supreme Court

Arkansas
James G. Petty, Executive Secretary
Judicial Department, Supreme Court

California
Ralph J. Gampell
Director, Administrative Office of the Courts

Colorado
James D. Thomas
State Court Administrator

Connecticut
John P. Cotter
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Justice, Supreme Court

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